Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, Volume II, conveniently compiled and illustrated with the study and care of Victor Piazzi, Doctor of Both Laws.

Legal and more solemn acts emanating directly from the Supreme Roman Pontiff: among these are those which can be made public by law, whether they are Decrees, or Instructions, or Responses, and other similar matters; especially the expositions and resolutions of cases from various Sacred Congregations of Cardinals, contributing to the accurate understanding and observance of ecclesiastical law, carefully compiled in summary; and finally, other legal matters, by which those things presented in the aforementioned acts are suitably illuminated, which may present difficulty, or which further contribute to the knowledge of existing law: for the benefit of those who diligently seek to understand the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard.

ROME, FROM THE POLYGLOT PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1891-92.

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[*Latin ed. p. 3*]

3. Letters, of brief form, from the Most Holy Lord Leo XIII; by which the Seminary of Saints Ambrose and Charles is established; which has its seat at St. Charles in the City. In the highest office which we hold, we consider nothing more opportune for the Christian cause, nothing more worthy of our pursuit, than that young men, called by the Lord from every region, may be instructed not only in the discipline of a holy life, but also in sincere and solid knowledge, so that, according to the nature of their office, they may everywhere be the light of the world, the sun of the earth, and that good leaven, whose power is diffused among the faithful for the right way of thinking and living. For since the Church is a kingdom founded by Christ the Lord for the salvation of every believer, and is the pillar and foundation of truth, it is necessary that it have valid instruments in its ministers, by which it may conveniently fulfill its salutary duties, and, in turn, establish its sons, and all who approach it, in every place, through the ministry of sacred men, in a stable manner, upon the foundation of truth and justice upon which it is established.

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Therefore, we have never neglected to devote our care to this work, so that dwellings of solid ecclesiastical discipline and doctrine may exist not only for clerics in the city, but also for those from other dioceses in this venerable city, in which the Chair of the Prince of the Apostles is placed; and that pure sources for acquiring knowledge may be readily available to them, under our vigilance; and we have always considered it our duty to be present to these dwellings not only with generosity, but also with authority, and when the time seemed right, to grant them, by legitimate right, a canonical form. Moreover, from such institutions, our endeavors at this time rightly demand that which, formerly under the name of College, was established at St. Charles in the City, to instruct young clerics from the dioceses of Gallia Transpadana, or Longobardia, as it is called, in sacred disciplines. This College, from the year 1854, had its beginning in the City, and produced a happy number of students, of whom Insubria justly rejoiced; but the changes in public affairs, which occurred in the City in the year 1870, caused it to happen that, with the dissolution of the company of students, the College itself ceased to exist. We, bearing this with great sorrow and displeasure, from the very beginning of our pontificate, with the illustrious Edoardo Borromeo...

[*Latin ed. p. 4*]

4. We have written Letters to His Eminence, Cardinal, Patron of the College, so that he might exert himself in restoring the fellowship of the students, and we have demonstrated our willingness, if these halls were to be open not only to Clerics from Insubria, but also from the Dioceses of Upper Italy, and also from the Dioceses of the regions of Mutina, Parma, and Piacenza. With the Most Excellent Man, whom we mentioned, diligently attending to this matter, and with the divine benevolence inspiring him, it happened that on the 30th of October in the year 1878, on the very day that the College had been founded, the beginnings of the sacred Seminary were dedicated in that place, under the patronage of the Most Holy Ambrose and Charles, Archbishops of Milan, with Clerics selected from the Dioceses of Upper Italy, who, having the opportunity, had come to the City. When these beginnings had proceeded successfully, desiring to advise the new Institute regarding its reasons and prosperity, we approved the rules drawn up for its governance and presented to us, and, with our authority, we appointed most distinguished men to the discipline of the Seminary and the administration of its affairs, and we received great joy, having observed that the progress of the students in virtue and doctrine corresponded to our expectations. Now, our beloved Son, Lucidus Maria, His Eminence, Cardinal Parocchi, our Vicar in the City, and Patron of the same Seminary, and also the Venerable Brothers, the titular Archbishop of Nicomedia and the titular Archbishop of Melita, having been appointed to the discipline of the Seminary and the administration of its goods, and having presented

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prayers to us, they requested that we consider the stability and growth of the Clerical Institute, which has now been commended by eleven years of experience, and that we would grant it the just and legitimate right to be subject to the canonical laws by our authority. Therefore, being moved by firm hope that God would grant increase to these auspicious beginnings, and having considered the prayers presented to us, we have decided to assent, and by these Letters, for the greater glory of God, for the growth of the Catholic Religion, we establish and constitute the Seminary, which is located at the seat of Saint Charles in the City, for the Clerics of the Dioceses of Upper Italy, and of the regions of Mutina, Parma, and Piacenza, under the patronage of the Most Holy Ambrose and Charles, and under our authority and that of our successors, and we will that it be with the same rights as those which are legitimately held by Clerical Seminaries in the City. Furthermore, since we believe that it is of the utmost importance for the complete and perfect cultivation of the mind and intellect, that those who are admitted to the Seminary should properly lay the foundations of doctrine, upon which the edifice of science may then be raised for their own and the benefit of others, we decree that those who have completed their studies should begin their studies in the Seminary with philosophical disciplines, and that, having been duly instructed and prepared, they should then progress to other disciplines.

[*Latin ed. p. 5*]

LETTERS. It has sometimes happened that young clerics, having already completed their studies in philosophical disciplines, desire to be received into the Seminary, and for just reasons request an exemption from the general rule. It will be the duty of the Moderator of the Seminary to report to Us and to Our Successors concerning these matters, so that what is deemed fitting may be decided. We are confident that Our paternal care, which We have bestowed upon the proper establishment of the Seminary, will provide strong encouragement to the students of the Seminary, so that they may daily increase in virtue and in the praise of learning; and they should also be spurred on by the thought that they are called to serve, especially in that region, where the footprints of priestly virtue, once deeply impressed by the blessed Saints Ambrose and Charles, have been an example for the good management of the Christian cause, and where fertile fields, and indeed the most extensive ones, are open for the benefit of the Church. Nor do We doubt that the Bishops of the dioceses, to whose students this seat of ecclesiastical discipline has been established in the city, will gladly encourage these young men in the sacred ministry, so that, given the opportunity, they may diligently make use of it; and We are also led to hope that the generosity of pious men will not fail to support the new Seminary, especially with the shining example of those who, in times past, left illustrious monuments of their beneficence for the erection and protection of the

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College. Finally, all that We have established and declared in these Letters shall be considered valid and firm, and We wish and command that it be so in the future, declaring that anything attempted regarding these matters by anyone will be null and void, notwithstanding any contrary circumstances.

[*Latin ed. p. 6*]

FROM THE SACRED RITUAL CONGREGATION OF ROME. Decree concerning the beatification and canonization of the venerable servant of God, Gaspar del Bufalo, canon of the Basilica of Saint Mark in the city, founder of the congregation of the Precious Blood of Our Lord Jesus Christ. Concerning the doubt: Does it appear that he possessed the theological virtues of Faith, Hope, and Charity towards God and neighbor, as well as the cardinal virtues of Prudence, Justice, Fortitude, and Temperance, in a heroic degree, in the case and with the effects of which we are speaking?

Among the many reasons why Rome is most dear to God, it is certainly outstanding that it has always flourished with men conspicuous for their sanctity. Signs of this divine favor have been numerous in this very century; and today, among other heroes of Christ, we can joyfully include the venerable Gaspar del Bufalo. Born in Rome to pious parents in the year 1786, from the very earliest age, like the dawn shining with the rising sun, clear and bright without clouds, he displayed excellent examples of faith, purity of spirit, and piety.

Having entered adolescence, he decided to dedicate himself to the clerical life, so that he might go to the pagan nations and there shed his blood for Christ. Since he could not carry out this plan in his youth, he devoted himself entirely to the growth of wisdom and grace, both before God and before men; indeed, he earned the praise of his teachers at the Gregorian University, and he was an example to all, especially because, with pious companions, he performed the duties of religion and charity with them, and he encouraged his fellow students with word and deed to correct their ways by observing the commandments of God, and to offer themselves to the Lord with a pure heart.

Elevated to the canonry in the illustrious Basilica Marciana and initiated into the priesthood, he shone like a lamp upon a stand in the house of God, diligently performing all the duties of the sacred ministry; and he also gave an excellent example of fortitude at that time, enduring exile and imprisonment with an unconquered spirit, so that he would not, even in the slightest degree, harm the rights of the Church through a wicked oath. Returning to Rome, he dedicated himself to

[*Latin ed. p. 7*]

On the seventh of May, summoned by Rome, he relinquished his Canonry, in order to dedicate himself more freely and completely to the salvation of souls. Therefore, associating himself with several priests, and

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with sacred expeditions and spiritual exercises, he laid the foundation for a Congregation of secular priests, which he decided should be called the Precious Blood. It is incredible how much he himself accomplished, and how great, like a good helper of Christ, he achieved for the glory of God and the benefit of his neighbors, during twenty-two years, especially in Rome and in Umbria, Emilia, Piceno, Tuscany, Chalastra, Samnium, and other regions of central Italy. He scorned all the pleasures of life, and refused all honors offered to him, he did not show anger, nor did he experience any discrimination, he allowed himself no delay or rest, even when suffering from illness, in order to spread the Catholic faith, and to awaken and foster the love of the Lord in the hearts of men, proclaiming the Gospel of God according to the Spirit, becoming all things to all men, that he might win all to Christ, he offered himself as an example of good works, especially in piety, humility, and the spirit of mortification and penance, and there was no condition of men who had not experienced the salutary help of the Venerable. Still remembered are those who, through him, were converted to the faith, sinners led to a good life, the zeal for divine honors awakened in the clergy, and pious societies instituted. And our own Rome is a witness to his ardent charity towards children in schools and orphanages, towards the poor in the night shelter of Saint Gall and elsewhere, and towards the miserable in prisons. This outstanding excellence of virtues, which God himself made even more splendid with heavenly gifts, increased day by day, until, seized by a severe illness, while he had already seen his Congregation flourishing, exhausted in his strength, he peacefully fell asleep in the embrace of the Lord on the feast of the Holy Innocents, in the year 1836. The fame of holiness, with which the Venerable Gaspar shone while he lived, was widely spread even among men renowned for their virtues, learning, and dignity, after his death, and was confirmed by miracles which were said to have been obtained through his intercession. Therefore, investigations were held by ordinary authority regarding his life and deeds: and after everything was completed that is to be done in these causes according to the Apostolic constitutions, an examination of his virtues was instituted. Therefore, this matter was discussed four times by this Holy Congregation: the first time on the first of July in the year 1873, in the offices of the Most Reverend Cardinal Patrizi, the Relator of the Cause; the second time on the fifteenth of

[*Latin ed. p. 8*]

April 8th, in ROMANA, in the year 1875, and a third time, for a more certain outcome of the cause, on the 17th of the calends of June in the year 1882, both times in the buildings of Vatican; the fourth time in the general assembly, held there before His Most Holy Lordship Pope Leo XIII on the 4th of the nones of September in the year 1890. In these instances,

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the Most Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rites, acting in place of the Most Reverend Cardinal Angelo Bianchi, Bishop of Praeneste, the Relator of the Cause, proposed the following question: "Does it appear that the virtues of Faith, Hope, and Charity in God and in one's neighbor, and also the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, together with their corresponding virtues, were present in the venerable servant of God, Gaspar Del Bufalo, in a heroic degree, in the case and with regard to the matter under consideration?" And the Most Reverend Cardinals and the Consultor Fathers each gave their votes. His Most Holy Lordship, however, postponed giving his judgment, and encouraged them to pray for the assistance of divine light in this matter of such great importance. On this very day, dedicated to the Blessed Virgin, after the celebration of the Eucharistic Sacrifice, approaching this more noble hall of Vatican and seated upon the Pontifical throne, he summoned the Most Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rites, and the Most Reverend Cardinal Angelo Bianchi, Bishop of Praeneste, the Relator of the Cause, and also the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, declared: "It appears that the virtues of Faith, Hope, and Charity in God and in one's neighbor, and also the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, together with their corresponding virtues, were present in the venerable servant of God, Gaspar Del Bufalo, in a heroic degree, in the case and with regard to the matter under consideration." He then ordered that this decree be made public and recorded in the acts of the Congregation of Sacred Rites, on the 14th of the calends of April in the year 1891.

C. CARD. ALOISI-MASELLA, Prefect of the Sacred Rites.

S. VINCENTIUS NUSSI, Secretary.

A brief account of his life: Like a choice fruit from the tree of Alet, our Gaspar, born of honest and pious parents, Anthony Del Bufalo and Annuntiata Quartieroni, lawfully married, saw the light in ROMANA on January 6th, 1786.

[*Latin ed. p. 9*]

ROME 9. A Servant of God, to whom the name Gasparis was given after being baptized on the following holy day. After completing his ninth year, the child received the Sacrament of Confirmation, while already afflicted by illness. He had almost reached the age of two when he was afflicted with a disease of the eyes, so that an expert in the healing arts completely despaired of restoring his sight. Then, the pious mother of this child, invoking the patronage of Saint Francis Xavier, and behold! she saw the infirmity driven away from her son, so that from that time forward, he used his sight perfectly, and without any miracle. Having received this benefit from the heavenly protector, the boy began to cultivate devotion and gratitude to a

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great extent, and as he grew older, he increased the fervor of his veneration, so that he could not be separated from the altar, where he spent hours in prayer and contemplation, and he felt himself transported into ecstasy by heavenly joy, his heart being filled with the power of virtue. Indeed, from the very beginning of his life, an outstanding character shone forth in the boy. He would turn away from empty amusements, prepare and adorn his little altar with his own hands, secretly offer prayers apart from others, celebrate the feasts of the saints, and reverently assist the priests who were offering sacrifices; these were his cares, his delights, his studies. And, truly, how much obedience, devotion, and love did he show to his parents? Did he not observe their faces and gestures? Did he not, if he had perhaps erred, humbly prostrate himself at their feet, and beg forgiveness with tears? It is enough to say that when his father spoke of him, he could not restrain his tears for joy, and he called the boy "holy." This boy, together with his most pious wife, devoted all their thought and care to the excellent upbringing of the child, both in matters of piety and in the rudiments of learning. And just as the mother brought him to church for the holy services and instilled in him Christian principles, so at home she encouraged him to maintain order, neatness, and cleanliness; and just as he was diligent in these matters that aroused piety, so also he performed his duties with obedience, and carried them out diligently. He also performed the tasks of the household, which were entrusted to him by his mother, and he performed them all the more willingly because he practiced the virtue of humility, and imitated the ways of Saint Aloysius; and when he heard of the innocent and penitent life of that saint, he absorbed it so deeply into his nature, that...

[*Latin ed. p. 10*]

In ROMA, throughout the entire course of his life, he strove to express this in every action. For if we observe the modesty and reserve of our young hero, we shall see that Aloysius was rooted in purity. For if, perchance, some words, deemed improper by the judgment of his parents, happened to escape from the lips of someone, he would suddenly turn pale, and was unable to reach for food; even his voice would fail him. He was so overwhelmed by anxiety of spirit! Moreover, even in his early years, he did not meet the gaze of others of the opposite sex, even among his relatives, and he would not allow himself to be corrected by anyone, not even by his own mother. Furthermore, the example of that angelic young man was equal to the most devout and fervent affection for the venerable Mother of God; and concerning her cult, as we shall discuss many things in the progress of this discourse, we cannot, at this time, pass over in silence the fact that, at that time, when the image of the Virgin appeared to have been moved by the sight of the indignities inflicted upon her by mortals, the most pious Servant of God, having gathered as many devotees as he could, walked publicly among the streets at sunset, carrying the images of the

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Mother of God, and there, kneeling on the ground, with the utmost piety and fervor of love, he recited the Lauretan Litany. But when we compare the Divine Aloysius Gonzaga with purity, it is because he preserved the lily of virginity, inviolate from all earthly defilement, throughout his entire life, and because he showed a steadfast devotion to the Blessed Virgin, which we have only briefly touched upon. Thus, he emulated severity and affliction in his own innocent body. Hence, his bed was laid upon crossbars, and his delicate side was secretly pierced with sharp spurs, so that his undergarment would often be stained with blood, and so that his mother might perceive a sign of penance. Often, his parents found him praying and meditating before the altar late into the night. Often, they found him sleeping on the bare floor. But he took food only to the extent that his strength would not fail. He abstained from the delights of feasts. On Fridays and Saturdays, or on days of vigils, he wished to deprive himself of food and drink, consuming only bread and water, unless the provident care of his mother prevented him. Moreover, he distributed food at breakfast to the poor, and when his mother, lest he should become weakened by hunger, would offer him another portion of food, the boy would constantly refuse it, so that he might merit, at the same time, the rewards of charity and penance, for the love of the Virgin. Not infrequently, he also hid money received from his parents in the bosom of the poor.

[*Latin ed. p. 11*]

In ROMA, all were struck with wonder at the examples of virtue, and venerated Saint Aloysius Gonzaga or Saint John Berchmans. But since virtue shines with greater brilliance when it overcomes a natural inclination, it is not surprising that our Servant of God, endowed with a fervent temperament and prone to anger, was deeply afflicted by this, showing it in his countenance and with the convulsions of his nerves, lamenting that he could not yet fully control the impulses of his passions. Nevertheless, after scarcely expiating these imperfections through the sacrament of first confession, which he received at the age of six, his fiery temperament was so moderated that, although he felt the force of these impulses, he scarcely revealed the slightest spark of indignation. Hence, gentleness, patience, and cheerfulness in the face of obstacles and controversies took the place of aversion and complaints. Therefore, it was fitting that the Lord granted him so great a grace to approach the tribunal of penance, so that the young boy might frequent this sacrament with remarkable devotion and heartfelt contrition. From the dawn of his life, he showed a love for the priesthood and a particular zeal for the apostolic ministry. He requested and obtained permission from his father to wear the clerical attire, and he urged his own brother, and other boys his age, to venerate the priests, to observe the duties of religion, and to practice innocence; he listened attentively to the advice of preachers, or he

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repeated pious meditations in the manner of a sermon, and he zealously rebuked those who were inclined to sin, striking his own body with a whip. What seems almost unbelievable in that tender and delicate age is that he contemplated leaving his home, *lares*, and he proposed a plan to a familiar acquaintance to go with them to the land of the infidel Turks, to preach the Christian faith there. Furthermore, he had already invoked martyrdom with his lips, and he showed the desire for it with all the fervor of his soul. It is indeed fitting to mention something of his studies, joined as they were with piety. Having been instructed in the elements of grammar at the very beginning of his boyhood, he entered the Gymnasium of the Roman College. There, he readily displayed the riches of his genius, winning prizes and surpassing his older brother.

[*Latin ed. p. 12*]

12. He surpassed all others in learning at Rome. However, he undertook such labors in pursuing his studies that he weakened his health, and was often forced to suffer from serious illness during the year. Yet, the greater his love for letters, the greater was his merit in piety. Therefore, before proceeding to school, he reverently participated in the Divine Sacrifice, and when the time for recreation arrived in the evening, for the sake of a little refreshment of the spirit, he hastened to adore the Most Holy Sacrament, exposed for public devotion. When going from home to the gymnasium, he diligently discussed matters of study with his best companions. No one, however, ever saw him except when he was with his father, or with a very few young men of excellent character. He was about eleven years old when, with great fervor and humility, he received the first Holy Communion in the chapels dedicated to the Angelic Doctor, Aloysius. From that time on, the voice of the Lord calling his servant to Himself resonated more clearly in his heart, and he responded more readily to the divine vocation. After a few more years and with a greater maturity in virtue, he decided to approach the threshold of the priesthood. Therefore, before submitting to the sacred tonsure, which he requested from his parents, he spent about a month in the Monastery of the Holy Cross in Jerusalem, with his monastic uncle who lived there, in order to prepare himself diligently for the sacred rite. After this, on the Sabbath of the month of April, 1800, with such fervor and intention of faith, he approached the sacred ceremony, that when the Bishop approached to cut his hair, he was so moved that he almost fell, and seemed to desire to embrace the Cross of Christ. Then, on July 7th of the same year, he received the minor orders of Acolyte and Lector, and on April 4th, 1801, he received the orders of Exorcist and Acolyte. Thus, enrolled in the military service of the clergy, he strengthened the practice of all virtues. But as it is common for the best to be unable to escape the bites of envy and calumny, so it happened that our del Bufalo, often subjected to derision, and sometimes even to insults, injuries, and beatings, for his pursuit of

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divine worship, bore all things patiently and joyfully. Not deterred by these obstacles in his pursuit of the path of virtue, he strengthened his spirit. He explained, taught, and imparted Christian doctrine to many children in the churches of the city, and to those gathered from the fields and neighboring villages, with the best and most gentle manner.

[*Latin ed. p. 13*]

In ROMA, he was encouraged by many to strive for the glory of God and the integrity of morals. He also fulfilled the office of Christian mercy by attending to those afflicted with infirmities and a contagious disease at the hospital of Saint Gall, and, as much as he could, he provided comfort to the body, feeding the weaker ones with delicacies taken from his own table, and sustaining the strength of those recovering. Then, in order to prepare his mind for sacred eloquence, he diligently memorized the complete orations of a very wise preacher, and, upon returning home, he wrote them down, astonishing everyone with the vastness of his memory and his progress. Furthermore, he invited young clerics recently admitted to the clerical Order to his home during their leisure time, so that they might have conversations about matters of the Gospel, practice their ability to speak in praise of the Blessed Virgin; hence, he would encourage them to compose hymns, weaving a garland of verses, as it were, before the altar dedicated to the Virgin, and to offer fervent kisses before her sweet image. And it was not only in this that his zeal shone forth; indeed, he obtained permission from the Abbot of the monastery of Saint Pudens, and secured a cell, and other rooms within that community, in order to establish a gathering there for young men chosen from among the citizens, whom he would draw away from the vanities and distractions of the world through the practice of prayer and sacred orations. Moreover, while in the city, where it was customary for young people to indulge in licentiousness, he would gather them together, and, with plays and spectacles drawn from sacred history, he would delight and nourish their piety. It is truly worthy of note that he was able to restrain and lead a large group of young men, one of whom was our Gaspar, who had barely reached his eighteenth year, with excellent guidance and the strictest discipline. At that age, as he was involved in worldly affairs, he began to feel disgusted and horrified by the vanity of the world and its empty pursuits, so that he decided to renounce worldly pleasures, to withdraw into solitude, and to dedicate himself solely to the glory of God. Furthermore, desiring to put on the monastic habit of Saint Sylvester, and determining how this might be accomplished, he implored the permission of his parents; but when they steadfastly refused, he, in accordance with that memorable saying, gave precedence to obedience – for obedience is better than sacrifice – Ecclesiasticus 4:17 – and thus, amidst

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the great throng and tumult of the world, he withdrew into solitude.

[*Latin ed. p. 14*]

14. Living in ROMA, either among his family or within the walls of the temples, he displayed exceptional obedience to his parents, and thus offered a most acceptable sacrifice to God. He had not yet reached the age for the priesthood when, in the church dedicated to Jesus, he explained the sacred Scriptures, and turned the faces and hearts of all who listened towards admiration and devotion. He also, with the richest abundance of eloquence and the fervent fire of charity, recited panegyric orations in praise of the Mother of God; and while surrounded by a select gathering of priests, he won the commendation, favor, and applause of all; his mother, standing nearby, felt such intense anguish and the overwhelming force of tears that she was compelled to leave the temple in order to find solace. He completed his studies in philosophy and theology with the highest praise, diligently pursuing pious ministrations and the constant practice of virtue, which was evident to all. When he had received the lower and higher orders of subdeacon and deacon, the former on February 21, 1807, and the latter on March 12, 1808, he renounced the distinguished position of canon in the collegiate church of St. Marci, by a decree of His Holiness Pope Pius VII, on December 8, 1807, at the age of 22 years. He was ordained a priest on July 31, 1808, by virtue of an Apostolic Brief concerning the deficiency of age and a rescript from the Holy See regarding extenuating circumstances. Meanwhile, that sorrowful time of the French expedition occurred, when neither piety, nor innocence, nor gentleness protected priests from the snares of the impious. Hence, the most gentle Servant of God, who had refused to take the oath required by the Holy See, was seized by grasping hands and first deported to Placentia, where he was afflicted by a serious illness, and then to Bononia, where he was imprisoned on September 12, 1812. He patiently and bravely endured the punishment of exile and imprisonment, and he bore all hardships and labors with great fortitude. Indeed, neither the narrowness of the cell, nor the illnesses and tumors that arose from it, nor lying on bare boards, nor the lack of food, nor the harshness and contempt of the guards, nor the fear of long journeys or greater evils to come, were able to break his constancy or his faith in God, nor to turn him aside even by a hair's breadth. To this great accumulation of afflictions of body and mind, was added the pain of the death of his mother, whom he loved above all others.

[*Latin ed. p. 15*]

ROME was seized. But while others were complaining and did not allow themselves any means of escape, he, on the contrary, gave thanks to God, because He willed to test him in adversity. He offered the sacrifice of the Mass as much as he could; nor did he neglect any other pious works and

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ministrations, but devoted specific hours to prayer, meditation, or reading spiritual texts, for the edification of the prisoners with him; whom, marked by the priestly dignity and unjustly subjected to the same suffering as our Del-Bufalo, he wonderfully comforted, raising their spirits to hope in God, and encouraging and exhorting them with fervent and zealous words, so that they might willingly bear the cross of Christ, and that they might be of great spirit, lest they disregard the oracle of the Supreme Pontiff, but rather obey it blindly and with complete obedience and submission. In this matter, there were some who sought to unsettle and soften the mind of the Holy Office, and with the appearance of certain arguments, as if with a snare, they sought to suggest that there was no fault in the oath; nevertheless, illuminated by heavenly light, and steadfast in his purpose, he preferred to endure all evils rather than deviate from the right path. He not only patiently endured the hardships and torments, but he did not even look forward to their end or outcome, nor did he yearn for freedom, nor did he express any lamentation. When several other priests were held in the same prison, he requested and obtained a more uncomfortable cell, so that he might better pray and study ecclesiastical matters; but in order to combine humility with the love of solitude, he ate with the others, and performed mutual acts of piety. In this confinement, having been seen to excel in virtue and wisdom, he was considered the most suitable to be the director of spiritual discussions, and although modesty opposed it, he was acclaimed with unanimous approval. He therefore accepted this office with humility, and fulfilled it so eloquently, prudently, kindly, and piously, that admiration and astonishment, as well as the fruits of edification, abounded in the hearts of his companions. Thus, blessing God and prepared to endure all sufferings for the sake of the faith, he was taken from Bologna, and from Fori-Cornelii, and from the prison of Luke, and, as he was about to be sent to Corsica, he had already begun his journey and had arrived in Florence, when, by the grace of God, the Gallic tyrant was overthrown.

[*Latin ed. p. 16*]

16 In ROMA, perfidia regnabat, et ministri sacri, cum optimo Del-Bufalo, ad libertatem redacti sunt. Post suum reditum in patriam, se Societati Iesu dedicare volebat, sed, per iussum Pontificis Pii VII, ad evangelium praedicandum coactus est. Servus Dei, humilis sed libenter onus illud suscipiens, tanta fortitudine, alacritate et constantia ad eam rem se dedit, ut prius animum, quam id deposuerit. In eo viro, disertissimo et sanctissimo, erant talis ingenii et virtutis dotes, ut nihil supra ad sacrum effingendum oratorem desiderari posset. Namque et consilio sapiens, et prudentia dexter, et fiducia in divinam opem, ac seraphica caritate pollens, et in scientia rerum divinarum maxime versatus, omnia haec cum uberi, culta, vehementi sermonis copia coniungebat, tum gestus orisque dignitate exornabat, et, per affectuum motus percipientes, animos auditorum quasi in caelum sublev-

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abat. Apostolico ergo muneri ita penitus adhaesit, et tanta eximia fervore erga mysteria Redemptoris nostri efferebatur, ut Congregationem missionariorum a pretiosissimo Iesu sanguine nuncupatam instituere decreverit. Cui proposito a S. Sede approbato, cum opes et modus deesset, nihil diffidit, aut animis pependit, sed divina spe fretus, oculos et manus in caelum sustulit, ut auxilium desideratum ab ipso descenderet. Nec sua fiducia eum defixit. Etenim spectatissimi Viri, inter quos eminentissimus Cristaldi, et pique benefactores, eleemosynas tantum contulerunt, et tanta sedulitate operam impenderunt, ut parvum redditum ad institutum promovendum efficerent. Atque hic, Dei favor, laboribus et pietati sui famuli prospiciens, mirifice eluxit. Nam exiguus coetus sacerdotum, sub ductu nostri Del-Bufalo, sancta societate coniunctos, sine divitiis, sine opibus ullis, calumniis saepe et insectationibus, ut bonam succrescentem messem invidentia internecare anhelabat, oppetitus, eo crevit, in diemque magis nunc crescit. Protinus ergo floruit et robore auctum est Institutum, et tredecim domos in pluribus pontificiae ditionis provinciis aperuit; et in illis potissimum quae Campaniam colunt, aut maris littora tangunt: cum enim eas gentes, natura ipsa loci et effera ingenia latrocinam et inhoneste vivere docuerint, ipse Maximus Pontifex Pius VII missionarios Del-Bufalo duce, suas illic sedes figere iussit, ut eorum populorum labes abstergerent, et re-

[*Latin ed. p. 17*]

ROME, 17, inflamed the spirits. Therefore, the greater the number of pious members that flocked to those houses, the more abundantly were the heavenly goods imparted, and their blessings and assistance increased. Moreover, the method by which the Most Holy [Father] employed in delivering missions, having been demonstrated by the best preachers, both in sanctity and in apostolic labors, and having polished the style of eloquence, so that it might more easily penetrate the minds of the listeners, he employed, at times, a gentle and mild manner, discoursing on divine charity, through which hearts might be kindled with heavenly fire; at other times, he expressed a grave and horrific sound, either in depicting the ugliness of vices, or in rebuking those who dared to tempt God with their ingratitude, or in bringing before their eyes the eternal torments of hell. To which severe and formidable manner of speaking, drawn up by sacred indignation at human wickedness, he would fiercely strike himself with a leather scourge, and stir up the people. Who indeed could enumerate the cities, towns, castles, villages, and finally, all the places that he traversed, and which he left flourishing with religion and good morals, and stirred by the fame of his sanctity? Beginning with the City [Rome], mistress of the Catholic world, he performed missions and spiritual exercises in numerous churches. He held these in the temples of Saint Nicholas in the Prison, of Saint Vincent in Camerte, and elsewhere; and he held them in the chapels of Saint Aloysius Gonzaga in the year 1814, which he repeated several times afterward, then

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at the Archgymnasium of Wisdom, then for the young men studying the art of surgery, for those studying at the Hospital of Consolation, for those devoted to the arts, then at the oratory called "Vita" by Father Cara, then in the places where licentiousness was stirred up, then for the soldiers, then for those detained in prisons, and finally, for the Cistercian monks and for many monastic houses, which it would be too long to enumerate individually. The external missions claimed even more heroic labors from the Most Holy [Father]. For he performed his apostolic office in Velletri and Anxur, frequently in Frusino, and from there he returned to Centocelle. Thence, he traversed almost the entire region of Campania, passing through Alatri, Veruli, Ferentino, Fregelli, Mamurri, the slopes of Mount Formia, Benevento, Caieta, and countless other places, which it would take too long to enumerate.

[*Latin ed. p. 18*]

48. Divided by distance and animosities, and separated by the length of the journey, the generous Del-Bufalo, through the harsh winter season, traversing the roads covered with snow, advanced with counsel, labor, and exhortation, so that he might unite hearts and bind them together in an eternal covenant. It is also worthy of mention that the tireless and magnanimous missionaries provided an example, for when, while setting out to perform his evangelical ministry in the region commonly called Bassiano, he fell from a cart overturned in a dense forest, plunging into a precipice. As a result of this accident, the structure of the cart was broken, and he was forced to walk, his feet bearing the weight, suffering from pain, and, moreover, soaked by a heavy rain, he was seized by a fever. Nevertheless, he did not cease his work for the mission, which labor exacerbated the fever, but although it sometimes forced him to rest against his will, it could not prevent him from hearing confessions. Such was his eagerness in striving for the glory of God and the salvation of souls! Nor did he cease his industry and diligence in these regions; he visited many cities of Romagna, the provinces of Piceno, and Umbria, and in the furthest lands, such as Hispelli, Camerini, and other dioceses, he expended much labor and sweat in cultivating the vineyard of Christ. While he addressed the people with sacred prayers, God Himself miraculously confirmed his zeal. For, as the sermon was coming to an end, a lightning bolt, without thunder, fell from a clear sky, passing through the windows of the church, harmless to the place and the crowd, by which marvel, their hearts were deeply moved, and they were filled with compunction and fear of the Lord. In these missions, which we have mentioned, he devoted himself not only to preaching, but also to all pious duties for the good of the people; he instructed all orders, and each age, in spiritual exercises, and left behind supports for the salvation of souls, he established chapels suitable for night prayers, and he gathered congregations of young people under the name of St. Aloysius Gonzaga, of

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girls under the name of the Daughters of Mary, or of the Sisters of Charity. Finally, his immense charity sought to imbue innocent youth with the first principles of the Christian religion, to restrain the ardent spirit of men, to break the chains of lust, to investigate, expose, and extinguish all the snares of vice, striving with all the strength of his mind and body, and with perseverance. And although he was so engaged and so distracted in these spiritual matters, he spent a portion of each day and night in the tribunal of penance. It should be noted, therefore, that men...

[*Latin ed. p. 19*]

In ROMA, he was most devoted to women, and, because of their remarkable dedication to chastity, he attended to their needs with great care and diligence. In order to provide for the corporal needs of those women who loved God, he established a group of noblewomen of the place, who, under the best of management, would provide assistance to the poor and sick, and distribute linen goods. With the same spirit of charity, he provided abundant food, assistance, encouragement, and consolation to the sick, whether in hospitals or in prisons. And all the people, wherever he went, or with whom he conversed, greeted him, recognizing him as a man distinguished by holiness, a seraphic lover of God and neighbor, an expeller of discord, a destroyer of hatred, a promoter and restorer of peace and concord, and a cultivator of all kinds of virtues. Indeed, who can recount the fruits of his good deeds? The progress he made in the spiritual lives of those who heard his heavenly words was truly marvelous, unusual, and abundant. For the sake of brevity, we shall pass over many excellent examples, but we cannot fail to mention that in Benevento in the year 1815, seventeen young men, steeped in the sophisms of atheism, after hearing the Servant of God speak about the final judgment of mortals, were deeply moved, and, having banished the darkness of error from their hearts, they publicly renounced their false doctrines and returned to the bosom of the Catholic Church. Also, in the locality commonly called Prosstdi, in the year 1823, a man publicly notorious for his infamy, absent from a gathering, was aroused by the voice of the Servant of God, who was rebuking his wickedness, and emerged from the mire of his vices, persevering in good works. It is also worth noting that the blessed mission in Del-Bufalo bore fruit not only in the conversion of sinners, but also in the perseverance in the faith of many who were already devoted to the Gospel, through the intercession of God. Furthermore, countless other sudden and firm conversions of wicked men, the return of many infidels and those addicted to various sects to the embrace of Holy Mother Church, testify to the abundant harvest reaped in the field of labor, a harvest that surpassed all human effort and expectation, and was plainly divine. This is also testified to by cities reunited in mutual peace; by the oblivion of injuries and wrongs; by the eradication of any rancor of spirit between spouses who were previously divided and averse

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to each other, and by the restoration of peace, love, and harmony.

[*Latin ed. p. 20*]

20 In ROMA, la concordia era perigliosa; le immense folle che affollavano i tribunali della sacra riconciliazione, dove i sacerdoti trascorrevano giorno e notte con grande beneficio spirituale, ne davano testimonianza; e, infine, le montagne di armi, persino preziose, di libri corrotti, di immagini lascive tagliate a pezzi, di ornamenti femminili, di vecchie bottiglie, che, offerte volontariamente dalle mani dei penitenti, venivano bruciate in pubbliche piazze alla fine delle missioni. Se avessimo visto l'uomo fortissimo di Dio, che fondava una congregazione e altre opere pie in onore della Divinità celeste, e che lavorava incessantemente per il bene, sia temporale che spirituale, sembrerebbe già dover esporre in dettaglio le sue virtù; ma poiché di queste cose si dovrà parlare più ampiamente e singolarmente in un commentario a parte, sarà ora opportuno seguire il corso della vita del Servo di Dio, e accennare alle ricchezze dei doni soprannaturali, alla sua felice transizione, e a prodigiosi segni, affinché sia chiaro a tutti quanto il Signore abbia onorato la sua vita e la sua morte con favori e carismi, e come abbia ricompensato la sua ardua virtù con una ricompensa visibile sulla terra, affinché anche i mortali comprendano la beatitudine di cui gode in cielo. La profezia brillò particolarmente. Infatti, sia che preannunciasse la sua prossima morte, sia che preannunciasse il suo allontanamento dalla società dei missionari, sia che preannunciasse la fondazione di una casa di missione, tutto si avverò. Previde all'Em. Cardinale Fransoni un danno alla salute dalle terme, e preannunciò a una donna il ripristino della salute attraverso l'assunzione dell'abito religioso, e entrambi sperimentarono la verità delle sue predizioni. Gli era concesso il dono della discrezione, con il quale istava chiunque chiedesse il suo consiglio sulla scelta di una vita, o dell'altra, portando sempre a un ottimo risultato; e con un solo sguardo, distingueva la verità dalle apparenze. Gli si aggiungevano estasi durante la preghiera, gli si aggiungevano rapimenti, e a volte la bilocazione, così che, mentre teneva un discorso pubblico nella piazza di Mendola, veniva visto contemporaneamente nel tempio, impegnato ad ascoltare le confessioni. Per quanto riguarda il suo ministero apostolico, dobbiamo trascurare quella straordinaria forza, che superava chiaramente le forze umane, con cui sopportò e tollerò così tanti lavori, affinché lo rendessimo un uomo che trasformava una casa in un centro di sapere, e che, con una capacità insuperabile di sottomettere ogni volontà, convertiva i più malvagi, conducendoli ampiamente al frutto della salvezza.

[*Latin ed. p. 21*]

ROME, 21st of the month: As I said, it is certainly worthy of remembrance that, while once preaching, he was understood by many from various nations who completely ignored the orator's language; that he was

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heard by others who were many miles distant from him; and that finally, while being listened to by a large crowd, he was seen adorned with three shining stars. He shone not only with charisms, but also with miracles. In one instance, he freed Dom Paschal Aloisi, who was afflicted with various and grievous infirmities, and restored his health. He also rescued another, who, having lost all hope of recovery from the doctors, and being near to death, was snatched from the jaws of death by an imparted blessing. Nor were other examples lacking, for he restored health to many sick people, and miraculously cured those afflicted with consumption and dementia; he also restored a woman, who had been brought by Saint Francis Xavier, to health. Besides the miraculous healings, when there was a lack of funds to purchase food for the house of the congregation, he multiplied a small sum of money, and he performed the same feat in the matter of provisions. Indeed, through the practice of all these heroic virtues, through the supernatural brilliance of his charisms, and through so many and such great miracles publicly witnessed by our Del-Bufalo, his reputation for sanctity arose. This reputation, which at that time was held in the highest regard by the nobles of the cities he visited, and by the common people, steadily and unceasingly progressed throughout the passage of time, and increased until the end of his life, and became even more renowned, as we shall demonstrate later. The Roman Pontiffs preserved this reputation when they ordered him to found and expand his congregation for the good of the Christian commonwealth; the most distinguished prelates preserved this reputation when they willingly entrusted him with the governance of his own diocese and commended him; many Cardinals and prelates, adorned with sanctity, wisdom, and learning, testified to this reputation when they called him "holy" in their sermons and letters; finally, provinces, towns, learned cities, and humble villages called him "holy" while he lived, and, remembering him for so long, diligently preserved his memory. Meanwhile, the long and incredible labors undertaken for the sake of the apostolate, the hardships endured from journeys, cold, rain, and the scorching heat of the sky, were drawing the noble man towards the end of his life. He himself, before his health was weakened...

[*Latin ed. p. 22*]

22. In ROMA, upon arriving, forewarned by a light sent down from heaven, he announced to his companions and associates the impending death, and for this reason he wished to go to each of the mission houses individually, and to repeat the final exhortations. It is fitting to explain the causes of the illness, so that it may be shown that the merit of martyrdom was owed to him. In Nepi, he began to suffer from a cough, an illness which he contracted because he neglected the duties of his apostolic ministry. From this, he fell from the carriage, and the rough clothing, as we mentioned before, bruised his chest, causing a persistent cough and fever. These

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pains were followed by weakness, a loss of appetite, and convulsions of the nerves. However, despite these sufferings, he did not falter in spirit, but continued to perform the daily sacrifice and other acts of piety. Throughout his illness, he displayed admirable patience, equanimity, and fortitude, and although it was necessary to care for his body, he was summoned to ROMA by order of the Cardinal Vicar, to minister to the mission in the church of Saint Philip Neri, as the Asiatic plague was ravaging the city. However, he felt nothing but the urgent impulses of charity, and without any delay, he hastened there. Here, as in the other missions, he abundantly bestowed spiritual benefits upon the people; but his strength, weakened by labor, and his cough, which grew increasingly violent, completely overwhelmed his already frail health. Thus, as the illness progressed day by day, he moved to Albano, where he did not cease to manage the affairs of his congregation, despite the great difficulty. Indeed, he devoted himself to every task, striving to complete everything, and to leave everything clear and orderly for his successor, as he said. He would complete unfinished tasks, review accounts, write letters, give instructions, and carefully consider all matters, and, to put it briefly, he offered all his remaining strength to ensure that everything was coordinated, and that the administration was sound, both for himself, for his companions, and for the entire congregation. Meanwhile, as the illness worsened, he demonstrated an example of patience, such that even though he was consumed by intense thirst, he never sought to cool himself at night, lest he miss the sacred Mass in the morning. Nor did he neglect, to any significant extent, the constant reading of the sacred Office, although it caused him great discomfort due to his weakness. Indeed, even when exhausted, and at times languishing from lack of nourishment, he asked nothing of his companions, nor did he complain, but with a pallor of countenance, he revealed his inner state without words, and he prayed that no one would be disturbed, offering himself as a sacrifice to the divine will. Thus –

[*Latin ed. p. 23*]

In ROMA, being gravely ill, he was carried to his own home, where he endured the torments of a final illness. The force of his raging infirmity was such that he always had a smile on his face, and he did not accuse his intense pains with any voice, nor with any sigh; he spent lamentable days repeating prayers, commending himself to the will of God, and entrusting himself to the guidance, now to the image of the Blessed Virgin, now to the image of Saint Xavier, now to the sacred manger of Jesus, a gift received from pious ascetics, which he venerated with all his heart, fixing his eyes, burning with love, upon them. Moreover, he fortified himself with the Sacraments, by which our Religion cleanses, nourishes, comforts, and strengthens the spirits departing from this life. Having received these of his own accord, and not by the exhortation of doctors, he shone with a

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heavenly smile, and exclaimed, "Now I am well and happy!" Having a certain foreknowledge of his death, he placed no trust in human resources or remedies, nor did he foster any hope of recovering his health, but he was already entirely in heaven, and he anticipated eternal delights in his soul. Nevertheless, he did not refuse to submit to medicines, even though they were grave and distressing, and although he judged that the emission of blood would be detrimental to him, he did not refuse to have a vein opened, obeying the doctor's orders, in order that the merit of obedience might be acquired; nor did he lose the strength of his spirit in the midst of his extreme sufferings. Indeed, he comforted those around him who were weeping, and, as far as it was possible, he strove to conceal his great anguish. With his senses still fully active until the very end, he used them to confirm himself in the commands of God, to persevere bravely, and to clearly exhibit the example of all virtues. On the same day of his passing, he commended himself to a certain family member, that he might take care that no woman touched his body, which was now lifeless and cold, so diligent a guardian of chastity, that what he had most carefully avoided throughout his life, that is, even the slightest trace of sensuality, should finally be avoided and repelled, even in the vestiges of his senses. Thus, already giving up his spirit, after repeatedly confessing, he rested in peace with his Creator, in the embrace of the Creator, in the presence of the priest Vincent Pallotta, a man distinguished by his sanctity, on December 28, 1837, at the age of 51. Scarcely had he flown to the heavens, when the same D. Vincent Pallotta, who had admired the innocence of his entire life, joined with penance and the virtue of all virtues, said, "Thus the just sleep in the Lord." And thus, he entered heaven.

[*Latin ed. p. 24*]

24 In ROMA, the same night, the pious ascetics of the Most Eminent Sala, Gora, the nephew, surrounded by the priestly garments of the Servant of God, were seen chanting psalms with his missionaries, and ascending to heaven. Others, rapt in celestial glory by the sight of the sacred Virgin, observed the Canons of Del-Bufalo, while Saint Xavier appeared. Henceforth, the fame of holiness increased more and more. The parental offerings were completed in the sacred church of Saint Angel in the Fish Market, with a large gathering of the faithful, and then the remains were transferred to Albanum, so that they might be buried there. In the temple of Saint Paul, the body was exposed, with a large assembly of the city's notables present. From this point on, miracles immediately began to manifest. For four days after death, a most pleasant odor emanated from the opened chest, and then the body was found to be intact and flexible. Experts in the arts gathered, who, having taken an oath according to custom, examined the mortal remains. These men, having observed that the body was preserved without any medicine, attributed the miracles to supernatural causes. And when

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they examined the body more closely, they found the intestines, which had been consumed by disease, to be restored after death. They found the mouth, which had been ulcerated by scurvy, to be fragrant, and they saw the tongue to be moist and red; they observed traces of astringents, and the lymph still flowed without any foul odor, and the shoulders, which the Servant of God had often burdened with blows in order to obtain forgiveness for sins, were marked with vivid purple spots, like the flowers of roses. These truly wondrous signs, having increased the fame of holiness, spread to neighboring cities and regions. Immediately, a devoted crowd flooded the temple, greeting the deceased priest as a Saint, and not only the nearby inhabitants, but also those from distant cities, came, enduring no journey or inconvenience. Some called him an outstanding Apostle, others a most glorious Saint, and they rejoiced in offering prayers, cutting off pieces of his garments, taking strands of hair, or touching the sacred remains with wreaths, rings, or fingers. Nor was there any time during the day when the entrance to the temple was not filled with the throng, nor, even at night, could the crowds be prevented from approaching the bier. The body was guarded by those in Excubiae. The College of Canons, with the students of the seminary, came to venerate the memory and the remains, and attended the solemn requiem Mass, with the angelic extinguishing of the funeral prayers offered by the Reverend Father John Meiiini, already known for his piety.

[*Latin ed. p. 25*]

ROME, the 25th, and then the Superior General of the Congregation of the Precious Blood, praised, and his words were met with sobs and tears from the entire populace, a most evident and splendid monument of common love and veneration for the deceased. While these things were being done, a man from the fortress of Gandulph, who had been suffering from persistent and debilitating ailments for many years, visited the church of St. Paul. He took a piece of the wax from the candles that surrounded the body of the Servant of God and swallowed it. Immediately, the fever subsided, his strength returned, and his health was restored, and he departed rejoicing, barely able to walk. However, a greater benefit was felt by a certain young man, who was healed both in body and in spirit. For he, having been consumed by the vileness of his morals, the wretchedness of his religion, and a shameful illness, came to the funeral of the Servant of God out of curiosity, compelled by the crowd. But immediately upon entering, he felt himself moved, as if touched by heaven. Then, taking a piece of linen near the body, and applying the water that had been used to cleanse it to his afflicted limbs, he immediately felt all poison depart, and the disease, which no medical art had been able to cure, was instantly banished. Astonished and moved by this event, he immediately sought out the priest of his soul, and, having expiated the sins of his past life through the

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sacrament of penance, he began a completely new way of living, in which he persevered steadfastly thereafter. After the funeral, on the seventh day, the remains, still in the same condition as we described, were placed in a chest, sealed and with other documents, and buried in the very church of St. Paul. And while a stonemason was working to excavate the burial place, another remarkable event occurred. For the stonemason himself, who had been tormented by rheumatism, immediately felt himself healed, and was never again afflicted by that ailment. And indeed, such a reputation for holiness could not be suppressed, nor could it be contained within a small area. Already, the neighboring cities of Albano, the fortress of Gandulph, Lansum, Lanuvium, Ansurem, Sora, Benevento, Ariano, Apulia, and Manfredonia were filled with pilgrims, and the fame spread throughout Rome and all the territories under the jurisdiction of the Holy See. And not only among the common people, but also among men of all orders, even the most learned and prudent, respected for their wisdom, teaching, and moral character, among nobles, noblewomen, bishops, and cardinals, who were accustomed to venerating the Servant of God as a pillar of heaven, and to imploring his intercession. From this, a great multitude of the faithful flocked to...

[*Latin ed. p. 26*]

26. In ROMA, his tomb was growing daily, with offerings coming even from distant cities. Indeed, here and there, votive tablets were presented as testimonies of graces received, or wax images were requested. Therefore, it was necessary to produce the largest number possible, expressed in colors or prints, not only for the use of the Italians, but also for foreign nations, who, drawn by the fame of the missionaries, wished to take away at least an image of him. It pleased God to approve and confirm this great piety and trust of the people in the patronage of His servant, not infrequently through miracles. In Nepete, in the year 1838, a certain Francisca Mariani, suffering from a severe illness, was ministered to with the sacraments by a priest, and, after prayers for the help of the Saint by those present, she immediately recovered. In Electa, the venerable Mother Margaret of the Castries, having been brought to the point of death by a consumption of mushrooms, felt the full force of the illness abate immediately, upon invoking the name of the Servant of God. In Lipsana, Soderini, a missionary, who was suffering from a hernia and was weighed down by mortal anxieties, was given a remedy, and upon awakening, he regained his health completely, without any trace of the illness: this cured Antonium Fulloni from a stroke: this restored the use of limbs and speech to the boy Anthony Brugiaferro, who had been mute from birth: this brought relief to Nicholas Sestini, who was near death from a terrible ulcer. No town or village was found that had not rejoiced in the living presence and divine eloquence of Del-Bufalo, and that had not also felt the power and intercession of him after his death.

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For just as Albani witnessed great signs of miracles, so in the fortress of Gandulph, besides countless others, Agatha Marozza, whose arm was paralyzed due to a metatarsal injury, immediately regained her health, upon invoking the Servant of God: likewise, the girl Anna Maria Marozza, who was almost blind due to a tumor in the eye, felt herself healed through his help: in Algidi, Maria Antonia Acciari was immediately cured from a very severe toothache, upon invoking the name of Del-Bufalo: in Lami, Magdalena de Petro obtained a cure from a double goiter; and there, James Marini recovered completely from sciatic pain: in Lanuvii, Peter Paul Pochini, seized by a putrid fever and lying without any hope of recovery, was freed upon the arrival of relics, and his sister, who was near death from epilepsy, obtained complete and lasting healing. Nor were Angela d'Alessio and Carolina Frezza spared from being snatched back from the jaws of death. Joseph Ferrante.

[*Latin ed. p. 27*]

ROME: On the 27th, having been anointed with sacred oil for a very serious ailment of the chest, he immediately recovered his health. Thomas Porcari of Corè was freed from inflammation, piercing pain, and other infirmities. Ascoli: Sister Constantia Vitali, a religious woman afflicted with convulsions for three years, was healed through the intercession of the Most Holy One, the miracle itself being attested to by the physician. In Rimini, Marianus Ballerini was healed from hydropsy. In Rome, Stephanus Mondelli obtained healing from phthisis. Finally, to conclude many things in few words, He redeemed many who were already lost to death from ulcers, or fevers, or tumors, or fistulas, or diseases of the throat, or consumption; He healed infants weakened by rickets or deadly diseases; He raised up the elderly who had been struck down by apoplectic strokes, and He restored vigor. Even the most remote regions have not lacked this abundance of benefits. For example, the daughter of the governor of Nice was so severely afflicted with a disease of the leg that the only hope of salvation was through amputation; after the image of the Most Holy One was applied to the afflicted part, she immediately rose from her bed and recovered perfectly, without any trace of the disease. Maria Gigante of Bastia, suffering from hydropsy of the chest and completely devoid of hope, was immediately healed by contact with the image of the Most Holy One. Finally, all of France admired the splendor of the miracles which were widely reported in their regions, and Gaspar Del-Bufalo celebrated the glory through public newspapers, letters, and monuments, spreading it throughout the entire Catholic world.

^-9 FROM THE HOLY CONGREGATION OF THE COUNCIL OF GENOA. PARISH DIVISION. April 11, 1891. Session 21, chapter 4, on reform.

SUMMARY OF FACTS. The village of the diocese of Genoa, called

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Castagnelo, which contains approximately 300 souls, belongs in part to the parish of Lorsica, and in part to the parish of Versi. In this place, an oratory was erected in the year 1837, and a chaplain...

[*Latin ed. p. 28*]

28th of January. He who celebrated Mass and performed other urgent spiritual ministrations for the people was appointed there by the Ordinary. But recently, a desire arose among many of the inhabitants, and a lively dispute erupted, that a separate and independent parish be established there in the oratory. However, the two pastors of Lorsica and Verzi, as well as the Archbishop, considered that the requests of that people should not be given a favorable hearing; therefore, at the insistence of the inhabitants of Castagnelo, the matter was brought before the Sacred Congregation. The Reverend Disputant, Patron, who defended the cause of the inhabitants of Castagnelo, in his argument, first recalled that, due to the distance of the place or the difficulty of the journey, which might suggest the necessity or evident utility of establishing a new parish, it is expressly and in precise terms prescribed in the constitutions of Alexander III, *Ad audientiam*, chapter 4, session 21 of the Council of Trent, that a division should be made. Cf. also Fagnan, in chapter *Ad audientiam De eccles, aedif.*, no. 19; Piton, *Disceptatio eccl.*, 160, no. 19; Rota decis., 578, no. 1, p. 19, vol. 2, *Rec.*. But in this case, both circumstances are present. For Castagnelo is almost two kilometers from Verzi, and three from Lorsica; and the roads from both places are very rough, as a knowledgeable surveyor would attest. Indeed, the distance and the roughness of the roads are so great that, for these very reasons, it was granted in the year 1837 that a chapel be erected in that region, and that a chaplain, who would provide for the spiritual needs of the inhabitants, be appointed by the curia. It must also be noted that the heretical Waldenses, seizing the opportunity from the opposition to the erection of a new parish, have often offered their services to the inhabitants of Castagnelo, promising them that a division should not be made.

[*Latin ed. p. 29*]

JANUARY 29. They were opposing those things which greatly concern the salvation of the people. To this, moreover, it is added that, some years ago, through favorable words, the wishes of the inhabitants were received by the curia, and the general vicar promised to satisfy their desires, provided that they establish an oratory and provide a suitable and adequate dwelling for the parish priest. But the inhabitants claim to have done all these things; indeed, they say they have collected the sum of 17,000 livres for the suitable dwelling and have deposited it in public funds, and that they are ready to hand it over immediately, to anyone, or even to the curia itself. But it is objected that the assessment of the necessity for division rests with the Ordinary: and the Ordinary is opposed to it. But it can be

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answered, as in De Luca, book 3, chapter 34, number 2, De parodi, that when the judgment of the Bishop is unreasonable, an appeal or recourse to the Holy See is permissible. Nor should the small number of the people be opposed; for, as Leurenius in *de beneficiis*, page 160, and Constantinus in *de votis*, decision 343, state with the authority of the Sacred Congregation of Rites, ten families are sufficient to establish a parish, provided that other just causes are present; thus, any difficulty in this matter vanishes. But as for those who reproach the suitability, claiming that it is neither present nor free, the two who have deposited the sum of 17,000 livres respond that they are ready to hand over this sum to ecclesiastical authority, or to any person designated by the Church. As for suggesting that the revenues of the parishes of Verzi and Lorsica should be reduced to a minimum, this is both harmful to the spiritual well-being of the inhabitants of Castagnelo, and it lacks any true detriment to the divided parishes. It must be remembered that a new parish can be established without harming the old parishes, and that only about 150 souls and a small portion of territory are taken from each of those parishes. Nor should it be said that the needs of the people can be met.

[*Latin ed. p. 30*]

30 January. Through the parish chaplain, coadjutor Castagneti, residing there; for it is well known that the vicarious and pastor must not exercise the same vigilance for the salvation of the flock. Furthermore, it must be considered that the Council of Trent, in Session 21, chapter 4, distinguished two cases, and ordered that a coadjutor be appointed, lest the parish be divided, whenever the number of the faithful increases, but the distance and difficulty of the roads do not warrant it; conversely, the council wished the parish to be divided whenever a large population resides in a remote location with difficult access. On this matter, see Bouix, *De Paroc.*, p. 2, c. 4, par. 6, Ursaya, *Discip. Eccl.*, vol. 1, p. 1, discourse 14, oi. 92, Rota, decision 78, n. 52, *Cor.*, Ansaldo, and finally, the Holy Congregation of the Council, in Aquinaten, March 21, 1827, Nola, February 3, 1758, and especially in Ianuen, August 18, 1866, in which a case was considered precisely similar to the present one, namely, the division of the parish of Lorsica, which is the same one that is involved in the present case, into a district called Figarolo, which is indeed small, but is located a distance of half an hour's journey; and for which a certain Demartino "had bequeathed a dowry to the new parish in his will." This division, despite the opposition of the parish priest, was approved and upheld by the Holy Congregation of the Council. Therefore, the advocate hopes that the Holy Congregation will reach the same conclusion in the present case. DIVISION SHOULD NOT BE ENTERED INTO LIGHTLY. But it must be considered that, although it is easier to proceed with the division of a parish when only the division of territorial jurisdiction is involved, and a dowry is provided for the new

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parish, and the endowment of the old parish is not diminished; nevertheless, even in these cases, the request for division is not always granted, nor is the favor always conceded. For, "since reason requires that what is well established should not be undermined by contrary regulations," from chapter b, session 25, of the Council of Trent, it follows that the division, whether of spiritual jurisdiction alone, cannot occur unless there is a just cause. But from all that is presented by the inhabitants of Castagnelo and their patron, nothing seems to be of sufficient importance.

[*Latin ed. p. 31*]

GENOA, 31st of the month. Or, to put it more precisely, what has been investigated sufficiently to establish the justice of the dismemberment [of the parish], and indeed, there are more reasons to show the uselessness and inappropriateness of the new parish. But when it comes to a matter of fact, nothing is more useful than presenting the very documents that pertain to the matter in order. Furthermore, in the first place, it is contrary to truth, or at the very least, not entirely in conformity with truth, that the Genoese authorities have, from the beginning, treated the petitions of the inhabitants of Castagnelo with indifference, and have never fostered their hopes, as is now reported by the Ordinary. Similarly, the Archbishop continues, or at the very least, what is said about the establishment of an endowment for the erection of the new parish is uncertain, and it is permissible for prudent people to suspect some fraud. For it is a principle, which is not commonly disputed, that a parish cannot be erected, nor a benefice established, without a certain endowment. To this is added that the erection of a new parish does not seem to be necessary for the salvation of souls. For the urgent spiritual needs are provided for by the chaplain who resides in the place; and for other needs, the two parish priests of the places of Y and Lorsica provide assistance, who are neither very far away, nor separated from their parishioners by a difficult journey. Indeed, if credence is given to the expert who, at the request of the parish priests, drew up a topographic plan of that valley in which Castagnelo and other parishes are located, it is stated that the distance from the church of Castagnelo to the churches of Verzi and Lorsica is not more than 1500 meters. Furthermore, there are two other parishes, Monteghirfo and Favate, which are adjacent, and although they are not the parishes of the inhabitants of Castagnelo, nevertheless, since they are so close, Monteghirfo being 800 meters from Castagnelo, they can certainly help the inhabitants. Nor, at least to any significant extent, is there any difficulty in the roads or journeys there, according to the aforementioned expert. Therefore, there does not seem to be any need to erect a new parish. But what is more, while through the erection of this parish, in the event of necessity or evident utility for

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Castagnelo...

[*Latin ed. p. 32*]

32. To the inhabitants, no benefit would accrue, but rather grievous damage and detriment would be inflicted upon neighboring parishes, according to what the pastor of the place, Verzi, observes, to whom both the Archbishop and another pastor give their support. Finally, these two pastors note, more out of caution than from any necessity demanded or required by the inhabitants of Castagneli, that not all are even agreed on this matter, but rather more of them still favor union with the older parishes. Indeed, as the Archbishop adds, now a greater number, who formerly seemed eager, have become quiet. Therefore, this argument, that is, the principle of prudent caution, seems no longer to be invoked in favor of the erection of the parish. Furthermore, the procurator and assessors of the municipality, in a suppliant letter presented to the Most Holy [See], implore that the grace requested by the inhabitants of Castagneli be denied, and this, 1. lest, on account of the erection of a parish, which is not proven to be necessary or of any true benefit, true and grievous burdens be added to the municipality, at least for the construction of the church, and new cares and anxieties arise; 2. lest the older, small, and poor parishes be brought to an even more deplorable condition; 3. finally, lest a new parish be erected in a most miserable state, with a very small territory and very few inhabitants. Therefore, it seems that the Archbishop, in his letter, rightly comes to the conclusion: that his support is opposed to this erection. Moreover, how much weight is given to the judgment of the Ordinaries in these matters, especially, is known to no one. And rightly so; for the Bishop is presumed to be more informed than anyone else about the affairs and needs of his diocese, as Rebuffus states in *Prax. benef.*, cap. 1, on the erection of churches and parishes, and as the Sacred Congregation [of the Council] states throughout, as can be seen in *Ipporogien. Dismembr.*, August 23, 1879. But contrarily, in *Lucana Dismembr.*, May 14, 1881, and in many other cases. With these things added, the proposal is to be weakened.

[*Latin ed. p. 33*]

33. Regarding the establishment of a new parish. The question is whether and how such a parish can be established in this case. RESOLUTION. The Sacred Congregation, having considered the matter on April 11, 1891, decided to respond: Negatively, in all respects (1). Regarding a dispensation. On April 11, 1891, through a summary petition. SUMMARY OF THE CASE. Baron Nicholas Galea states, among his many children, that two of them, Joseph and Lawrence, are enrolled in the Melitensi College of St. Ignatius, and are attached to the clerical group, and that neither of them possesses any benefices of lay patronage. He requests that he, or these two sons of his, be granted the faculty to seek and obtain other benefices of the same

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nature; the income from which, added to that which they already possess, would amount to 2500 scudi for each. For this purpose, the father requests this dispensation, so that he may withdraw his sons from the Melitensi College of St. Ignatius and transfer them to Rome, or elsewhere, where their education may be more fully developed. The Bishop commends the Baron's prayers, because it concerns two young men who, if they pursue ecclesiastical service, could be of great utility and adornment to themselves and to the Church; because they belong to a most noble family; from which, besides others worthy of commendation, the illustrious Cardinal Fabritius Sceberras also originated; and, on the other hand, the orator's father cannot bear the necessary expenses for this purpose. (1) *Collectio*, Vol. III, 396; Vol. XII, 287; Vol. XIII, 60, 293, 299, *Acta*, Vol. XXIV, p. CCLXXVII.

[*Latin ed. p. 34*]

34. MELEVITANA Disputation: A Synopsis. A dispensation is requested according to the common law, confirmed with the most serious words in the 24th session, chapter 17, of the Council of Trent, and closely related to distributive justice, which prohibits the accumulation of multiple benefices upon the same person: and the dispensation is requested not specifically to hold a third or fourth benefice, but indefinitely, until the income of 2,500 livres is reached, which may leave many priests destitute even in that island, by these two boys: and furthermore, it is requested not as a necessity, but merely so that a more splendid education may be provided for these boys; for from the income of the two benefices which they possess, there appears to be sufficient means to provide for their education at the College of St. Ignatius, which seems to be implicitly admitted in the prayers. However, considering the distinguished character of the speaker, the recommendation of the Ordinary, and the hope of future good, whether the grace should be granted, was left to the prudent judgment of the Fathers. With these and other premises, the question was raised as to how the prayers should be answered. RESOLUTION. The Holy Congregation, having taken cognizance of the matter on April 11, 1891, decided to respond: Negatively.

COMPOSTELLANA OF SPONSALIA. April 11, 1891. Session 24, chapter 18, Concerning reforms.

COMPENDIUM OF THE MATTER. At the beginning of this century, and precisely on April 28, 1803, Charles III, King of Hispaniae, issued a decree, called the Pragmatic Sanction, by which he established: "No ecclesiastical or civil tribunal within my domains shall admit—"

[*Latin ed. p. 35*]

In COMPOSTELLANA, thirty-five petitions concerning betrothals were presented, stating, "If these are not promised by public writing." This arrangement, as is evident, was contrary to the common law, which requires no formalities for the validity of betrothals, but only that the contracting

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parties sincerely intend to enter into marriage, according to *Nostrates* 30, question 1, section 1, on betrothals and marriage, and also canon 1 of session 24 of the Council of Trent, concerning the reform of marriage. Furthermore, this arrangement was harmful to ecclesiastical jurisdiction, inasmuch as the civil authority, by enacting this law, exceeded its limits and encroached upon the spiritual province. For matrimonial and betrothal causes belong solely to the ecclesiastical forum, according to Sc. pr. 74, and only secular princes can decide matters concerning general creation, according to the encyclical *Arcanum* of Pope Leo XIII. Therefore, this Pragmatic Sanction of Charles [III], because it restricted canon law and encroached upon ecclesiastical jurisdiction, was not accepted by many from the beginning, and many bishops protested against it. However, over the years, both episcopal courts and ecclesiastical men gradually acquiesced to this arrangement; indeed, some even maintained, both in schools and in treatises on moral or canon law, that betrothals made by Spaniards are not valid unless they are celebrated by public writing, as if for their validity in Hispania, this form had become a substantial requirement. Thus, the Bishop of Placentinus stated around the year 1880 that "in all ecclesiastical tribunals, the Carolinian arrangement had been strictly observed," and that he, as that time's Procurator, affirmed that it "had been constantly and universally observed; and therefore, it had lost its customary force in canon law and ecclesiastical discipline." However, others held a different opinion. Therefore, at the request of the Bishop of Placentinus, the following doubts were presented to the Sacred Congregation of the Council on January 31, 1880: 1. Are betrothals, which are contracted in Hispania without public writing, valid? And, 2.

[*Latin ed. p. 36*]

36. From COMPOSTELLANA, the inquiry was: Firstly, can a public document serve as a substitute for a written agreement in a court case concerning a dispensation from some impediment? Secondly, can such a document be considered valid in Spain? To these questions, the Sacred Congregation responded: "To both, negatively." Thus, the opinion was confirmed of those who maintained that the public document, for the validity of the betrothal, was considered by the Spanish to be a substantial and necessary element (1). However, recently, a new civil code was enacted in Spain, and it contained new provisions regarding betrothals, as stated in article 43: "Betrothals do not impose an obligation to enter into marriage. No tribunal will accept a petition for their completion." And in article 44: "If a promise has been made through a public act or a private written agreement, either by a person of legal age or a minor, supported by the authority of those whose consent is necessary for the celebration of the marriage; or if publications have been made, the person who refuses to enter into marriage without just cause is obliged to compensate the other for the expenses incurred for the

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purpose of the marriage. However, a direct action to obtain compensation for damages can only be brought within one year, calculated from the date on which the celebration of the marriage was denied." In light of these circumstances, the Archbishop of COMPOSTELLANA wrote: "Since the declaration of the Sacred Congregation in Piacenza conferred binding force on the civil law, which no longer has effect; it is asked, whether the aforementioned declaration still possesses binding force, or whether the disposition of canon law returns to its original state for those places to which it is binding, according to chapter [reference missing]. Furthermore, do betrothals constitute an impediment if they are not completed in writing?" The Synodal Disputation noted that the central point of the present matter is whether, due to the change in civil law, the ecclesiastical law regarding betrothals has also changed in Spain. THE IMPEDIMENT NO LONGER EXISTS. (1) This matter was discussed in Volume XIII, page 186.

[*Latin ed. p. 37*]

COMPOSTELLANA 37. However, if any doubt can arise concerning this matter, it seems to stem solely from the fact that the particular law currently in force in the Spanish Church regarding betrothals, and to which the Sacred Congregation approved in the aforementioned Piacentine document, appears to have originated from civil law, and to be intimately connected with it, to the extent that, if the former were to collapse, the latter would necessarily also collapse. "For since the principal cause is absent, neither can those things which follow after it have place," from 1. Nihil dolo 129 ff. De reg. iur. "For those additions are extinguished, when the principal things have been annulled," from I. 2 ff. De pecul. leg. Whether this principle should be maintained in this case, or not, is for the Fathers to determine. Nevertheless, it should be noted that, should it be judged that the particular law currently accepted in Spain has ceased to be in effect, it would be necessary to further determine whether the common canonical law regarding betrothals has been revived in Spain, or whether some new regulation has been introduced or is to be introduced concerning this matter. AN OBSTACLE STILL APPEARS TO EXIST. However, it is not without reason that it is maintained that a change in civil law does not alter anything in the Spanish Church concerning ecclesiastical law. Indeed, betrothals, insofar as they pertain to marriage, ought to be governed by canonical law, and it is solely the Church that should regulate those matters which pertain to the substance, or to the form and solemnities of this contract, as clearly stated in session 24 of the Council of Trent, De ref. matr. Therefore, whether those laws enacted by Charles III at the beginning of this century, or those recently enacted in the Spanish Code regarding the obligations of betrothals, are valid or not, they are certainly invalid from a Christian perspective. It is taught in the text expressly in the final chapter of De reo eccl. non alien. that secular laws and statutes which specifically regulate

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churches and ecclesiastical or spiritual rights, or which proceed against ecclesiastical freedom and immunity, are not valid, and should rather be called a destruction and usurpation of jurisdiction. Indeed, it is said that the Sacred Congregation approved the Caroline Pragmatic Sanction.

[*Latin ed. p. 38*]

38. Having lived and been sanctified in COMPOSTELLANA, and since it is permissible to respond to the Sacred Congregation of the Council [S. C. C.] with greater deference to ecclesiastical custom, I shall follow the unusual pragmatic sanction, having recognized it myself. It is known that long-standing "customs, having been verified by the consent of those using them, create a law," as stated in § Ex non scripto de iur. nat. et gent. in Inst. and cap. C umana 59 De eieci. And therefore, it is most evident that these customs can be removed or abrogated in the Church, and a new, contrary law can be introduced. Cf. Reiffenstuel ad tit. De consuet. n. IO, 11, seq. Therefore, it must be said that the Sacred Congregation of the Council both recognized and approved the prescription of civil authority, which in itself was nothing, but rather a gradually introduced ecclesiastical custom, which constituted an unwritten law. Hence, the reason for doubting the aforementioned argument seems to collapse. For if a particular disposition regarding the value of marriages is considered to have been introduced in the Hispana Church not by the force of law, but by the authority of sacred canons, and if civil law is merely an opportunity for this new ecclesiastical discipline regarding marriages, then it follows that this ecclesiastical discipline is not intimately connected with civil law, nor does it adhere to it as a principal accessory. Barbosa observes, ad reg. 4.2, iur. in IV n. 12, that something can be an accessory to another in four ways: 1° as without it, the principal thing becomes null or useless; 2° if it is so inherent in the thing that it is a portion and part of it; 3° because, by the nature of the thing, or by the disposition of the law, or by the agreement of the parties, it always follows and accompanies another; 4° because it depends on another, like an effect from a cause. Furthermore, since the ecclesiastical law regarding the solemnities of marriages in Hispania in no way depends on the sanction of civil law as an effect from a cause, or by any other reason, it must be maintained that, once introduced, it absolutely and independently subsists from the will and variation of the civil code. With these and other considerations, the purpose [of the argument] is weakened.

[*Latin ed. p. 39*]

COMPOSTELLANA 39. Question: Whether those things which the Sacred Congregation of the Council declared and established concerning the validity of marriages on the 31st of January, 1880, in the matter of Piacenza, are still to be considered valid today, after the alteration of the civil code of Spain, in this case.

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RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on the 11th of April, 1891, decided to respond: Affirmative.

FROM WHICH THESE ARE GATHERED:

I. That those things which pertain to the form, substance, and solemnities of marriage ought to be governed by the laws of the Roman Church.

II. And consequently, whatever the civil laws prescribe concerning the sacrament of marriage, they are to be considered as an usurpation of jurisdiction.

III. However, to establish a right and a law with the power of obligating, it is necessary to confirm long-standing customs, approved by the consent of those who use them; from which it follows that in the Church, a common law is abolished and a new, contrary law is introduced.

IV. That it can be maintained, not from the fact of the Caroline Pragmatic Sanction, but from an unusual and legitimate custom, supported by pontifical authority, a non-written law has arisen, which is still in force, from which it is determined that marriages in Spain have no validity unless they have been completed through public record. BONONIEN. MATRIMONII, Session 24, chapter 1, Concerning the reform of marriages. In the plenary assemblies of the 10th of May, 1890, (1) this controversy was proposed under the question: "Does the nullity of marriage exist in this case?" and it was decided to respond: "Negatively."

CAUSE FOR PROCEEDING. (1) This question was presented in Volume XXIII, page 140.

[*Latin ed. p. 40*]

40. Regarding the case of Anthony Zucchini, who obtained a benefit of *nova audientia*, the controversy is again to be examined today.

A Synopsis of the Defense of the Count, Anthony. Patrons who defend the rights of men, relying on the authority of many Doctors of the Church, recall that, especially in marriage, which carries with it a perpetual and indissoluble bond, full, absolute, and complete freedom, and spontaneous consent, are required; and that the greatest obstacle to this is the fear that causes disturbance in the mind of the contracting party. Gonzalez, *lib.* 4, *Decret*, title I, chapter 15; Pirringh, *lib.* 4, title I, section 4, n. 101.

Voluntary consent is required to a greater and more perfect degree for marriage than for other civil contracts; so that even a lesser fear is sufficient to invalidate a marriage. Fortius, *De impedimentis matrimoni*, cause 31, question 3, § 13; Cosci, *De separatione thorum*, book I, chapter 8, n. 3. Indeed, the freedom and security of the contracting parties must be so complete that not only coercion, but even the fear of coercion, or a just fear,

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suspicion, and the indignation of parents, are sufficient for fear. Zypaeus, apud Van-Espen, part 2, section 2, title 13, p. 1; Cosci, *De separatione thorum*, book 3, chapter 4, n. 86; Rota Decis. 374, § 7, *coram* Ladovisio.

In order for a marriage to be invalidated, it is not necessary that the fear be caused by threats of death, bodily torture, or the like, but even such a fear is considered sufficient, namely, in the case of a steadfast man, the fear of losing a large part of his property, of suffering a serious loss in his own affairs, of losing a great profit, of being deprived of his inheritance, or of incurring the wrath of his father and family, as the terms teach: Schmalzgrueber, *tom.* 4, part 1, title 5, n. 493; Barbosa Vat. decis., *lib.* 2, vote 16, n. 33; S. Rota Decis. 732, § 9, *cor.* Emerix Decis. 870, num. 3 et 4, *cor.* Ludovisi; Decis. 326, § 8, *cor.*

Neither should only the nature of the threats be considered in determining the gravity and weight of the fear, but also the quality of the person inflicting the fear, as well as the person experiencing it.

[*Latin ed. p. 41*]

"It is understood that the father instills fear in his son who dwells with him in the same house, and that the father is of a harsh and rigid disposition towards his son, unyielding and severe, and steadfast in his intentions. In such a case, even if the father does not carry out the threats he has made, nevertheless, as Sánchez de Matrimonio observes in book 4, section 10, number 14, "who is the constant or prudent man who would not consider it a grave evil to always have before his eyes an offending father from whom he depends and with whom he will always be in contact?" And although simple reverential fear is not considered so grave as to invalidate a marriage due to a lack of consent, nevertheless, proponents argue that it can have this effect if it is combined with another fear arising from explicit threats, or from other circumstances, and which is qualified or aggravated. Furthermore, established jurisprudence holds that prolonged and persistent persuasions, indeed even frequently repeated prayers, regarding the proposed marriage, when combined with reverential fear, even without threats or beatings, can constitute a fear that weakens a constant man and renders the marriage invalid. See Cosci, *Dissertationes theologicae*, book 3, chapter 4, number 78 and following; Pignatelli, *Consilia*, volume 9, opinion 180, number 19; Pirringh, book 4, letter 1, section 4, number 119; Schmalzgrueber, volume 4, part 1, title 1, section 493; Gonzales, book 4, *Decretum*, title 1, *De sponsis et matrimoniis*, chapter 15; Barbosa, *Vota decisoria*, book 1, volume 1, number 36; Antoine, *De matrimonio*, chapter 3, question 3, number 7; Lezan, *Consultationes*, 47, number 15, volume 4. The reason is that, as Reiffenstuel notes in book 1, title 40, number 95, "on the one hand, such persistence from parents greatly burdens, vexes, and sometimes oppresses those subjected to it. On the other hand, the reverence due to parents and the fear of offending them are not lightly con-

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sidered." Also, see *Sacra Rota Decisorum*, 32d, section 13, before Louis; "For such importunate persuasions, when we are dealing with a person to whom reverence is due, constitute a just fear and have the force of coercion." Also, see *Corpus Emerix Decisorum*, 870, number 7. These principles of jurisprudence hold even more weight if the father, lying about the fear, has an interest in the celebration of the marriage, because he believes and hopes for a great..."

[*Latin ed. p. 42*]

42. BONONIEN. [He] considers that it will be of use to him or to his family; for then it becomes more difficult for the son to oppose his father's desire, because great fear arises of incurring his greater indignation, as Barbosa, *Vat. decis.*, lib. 2, vol. 16, n. 30, states. It is, however, more forceful if it concerns a son who has not yet reached the age of majority, especially if he is of a timid disposition and accustomed to obeying his father's will. In this case, less fear is required to invalidate the marriage. With these premises established in law regarding the nullity of a marriage caused by fear, it is noted that when the matter concerns fear instilled by the father within the domestic walls, and the son resides with him, it is necessary to present the strongest argument based on probability, and on supporting, accompanying, and subsequent circumstances related to the marriage, and that witnesses should not be rejected, even if some are subject to exceptions, such as servants and relatives, as several decisions of the Sacred Tribunal demonstrate, *Decis.* 326 § 3, 351 n. 6, 374 § 1 *cor.* Ludovisi, and *decis.* 325 § 11, 732 § 6, 870 § 6 *cor.* Emerix. Then, proceeding to demonstrate the facts, the proponents first explain what the character and usual behavior of Count Caietan Zucchini were like in instilling fear in the son. Several trustworthy witnesses, with one voice, declare that his nature was entirely firm, tenacious, and inflexible, and that he was domineering and severe in his family. The depositions of these witnesses, E. E. P. P., are already known from the presentation of the previous case. Furthermore, the witnesses presented by the opposing party testify that they found Count Caietan to be endowed with urbanity and courtesy. Moreover, most of these witnesses knew the Count very little or not at all; furthermore, they do not speak of intimate and family relationships, but of those that he had with outsiders; which the proponents do not deny, provided that the witnesses themselves confirm this. But even with these points raised, in order to demonstrate the character of Count Caietan...

[*Latin ed. p. 43*]

BONONIAN. 43. According to those who relate the matter, certain letters written by the father to his son, recently brought to light, are sufficient to demonstrate the character and severity in the management of the family. One of these letters, although lacking a date and addressee, appears to

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have been written at a time when the son was returning from college to his paternal home, and from the precepts it contains, it is clear that the father intended to exercise his authority over his son with the utmost severity. Indeed, as the authors of these letters state, the father not only wished that the son should make known to him his words, thoughts, and desires, but also forbade him from thinking anything without the father's permission, under the threat that he would not be received back into the paternal home, and would be sent back to his youth. Moreover, he commanded the son to offer, from the very beginning, a complete and perfect sacrifice of his own will, as if he were a mere instrument for the fulfillment of the father's will. But this severity is further emphasized by the tenor of another letter from the Count of Caietana, from which it is clear that he was accustomed to become extremely angry with his son, even for the most trivial reasons. For, on one day (a few months before the marriage agreement with Gozzadina was drawn up), Anthony committed a very slight and utterly insignificant offense, and the father was so enraged by this that he banished him from his presence, and although the son humbly begged for forgiveness in a letter, this was not enough for the father to deign to admit him again before him, but rather he declared in writing that he would never tolerate such offenses, even if they were the most trivial. Indeed, he threatened that he would not live with his son unless he changed his ways and showed signs of greater love, obedience, and reverence towards his father. Nor are there lacking other examples of the rigor and severity with which the Count of Caietana was accustomed to treat his son, as is confirmed by other letters. All of these, when considered in conjunction with the timid, mild, and submissive character of the Count Anthony, as the witnesses unanimously declare, provide the strongest argument that the fear instilled by the father could only result in a constant state of anxiety, and indeed, that only prayers and persistent entreaties could have any effect in these circumstances.

[*Latin ed. p. 44*]

44 BONONIENSE. That compulsion and coercion were present, according to the doctrine explained above. To this vehement fear instilled by presumption, another reason was added, namely, the advantage that the marriage of his son with Gozzadina would bring. From what was stated in the preceding cause, it is known that the Count Caietanus was at that time in a very precarious financial condition due to guarantees given to his nephew, and that the family of Gozzadini was among his principal creditors, of whom he was therefore greatly in need, both for their assistance and for their name. In this matter, having already presented other testimonies, the advocates now add one more to show what the true extent of this foreign money was; and this is the testimony of the reasoner Stanzani, who declares that the foreign money, by which the patrimony of the Count Caietanus was burdened in the year 1866, exceeded ten million livres; and that he

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had, for a no less sum, acted as guarantor to certain companies and private individuals. It is therefore not surprising that the Count, being in such a difficult situation, considered it the best course of action to propose the marriage of his son with the sole heiress of the Gozzadini family, and to strive with all his might to bring it to fruition. Moreover, the advocates argue, there is another equally powerful presumption of coercion, arising from the fact that the Count Anthony, at the time when the marriage with Gozzadina was proposed to him, had for several months been experiencing a very strong affection for another Bononian girl, of noble birth and exceptional beauty, as several witnesses testify; and therefore, his mind should have been entirely averse to the marriage with Gozzadina; as is stated by Barbosa, Vol. dec., lib. 2, vol. 12, n. 14, and by the Rota cor. Ladovisi. Hence, Anthony, contrary to all expectation, opposed his father's will as soon as he was informed of the proposal of marriage with Gozzadina: hence the father's indignation, and then frequent quarrels, disputes, shouts, acts of violence, and threats by the father against his son, without any assistance, and with the intention of disinheriting him through that constant reproach, "ti accomoderò io," as many witnesses testify.

[*Latin ed. p. 45*]

BONONIA. 45 After these things, in order to dispel certain difficulties already mentioned in the preceding page, the parties here inquire, and, noting once again the timidity inherent in Anthony, with reverential fear and the danger of losing a significant portion of his possessions, and after considering certain circumstances accompanying the marriage, which confirm Anthony's repugnance in the marriage, and finally, after the testimony of several witnesses, and the direct and painful confession of the father himself regarding a grave error committed by him, they conclude that the demonstration of force and coercion in this case is complete and absolute in every respect. This cannot be called into question in any way, given the testimonies of the witnesses, and certain excerpts from letters written by the mother of Anthony to a friend, according to the well-known rule of law, namely that in a contentious matter, greater credence must be given to two witnesses testifying of fear, than to a thousand testifying of free and voluntary will. For the proof of free will is almost impossible, and when fear is present, acts that appear to express joy are presumed to be simulated. Panini, *Oll. in Decis.* 102, year I, page 375; Barbosa, *lib. I, vol. I, no. 84*; *Rota Decis*, 326 § 26 and 392 n. 3 *cor.* Ludovisi; *Decis.* 628 n. 8 *cor.* Merlino; and *Decis.* 732 *cor.* Eme rix. This rule of law has even greater force in this matter, 1. because the witnesses on the opposing side are found to be allied in the conflict, not only with others testifying of fear, but, what is more, also with the confessions of the one who instilled the fear, namely the father; 2. because Anthony, among other things, had received an order from his father to always carry out whatever his father commanded, even if

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it was contrary to his own will. Therefore, the acts elicited under the force of this command are to be considered all the more simulated, as stated by Barbosa, *lib. 2, vol. 16, no. 87 and 93*. From this, it is also explained how Anthony, when questioned by the Parish Priest before the publication of the banns, responded without hesitation that he was entering into the marriage freely and voluntarily; and how, during the actual celebration of the marriage, he gave no sign of opposition.

[*Latin ed. p. 46*]

46. BONONIAN. And this, under the hypothesis that full faith must be given to the aforementioned testimonies of witnesses and the excerpts from letters, which henceforth are diametrically opposed to what was stated by the Princess Simonetti, a witness entirely without suspicion, and by other most esteemed witnesses; and therefore, what is presented on the contrary is certainly not exaggerated, as the very advocate will demonstrate in his separate observations. Hence, it is clear how much importance must be given to what is drawn from the aforementioned testimonies of witnesses and excerpts from letters, and which are extolled to the heavens regarding mutual love and harmony between the spouses. Deeds are better than words; indeed, after a few months, there was separation, and subsequently, the woman fled. It cannot be objected, at least during the marriage, that the fear had been dispelled and the nullity of the marriage thereby remedied. Since, after the Council of Trent, it is absolutely necessary, in order to ratify a marriage, to renew the consent before the parish priest and witnesses, except in the case of a hidden impediment, which, indeed, could never be proven in a trial, as is the common opinion of Doctors, as Reinffestuel states in Appendix d. de dispensationibus, § 2, no. 44. Furthermore, the opponents wrongly appeal to the rule, "In doubt, it must be judged in favor of the validity of the marriage;" since, according to the advocates, in this case, given the most serious circumstances of the facts, as has been proven, there can be no doubt about the fear instilled; and moreover, since this concerns a defect in consent, and therefore the very substance of the contract, the contrary rule must be followed, namely, "In doubt, freedom must be favored." Thus, Barbosa teaches, among other things, in book 1, no. 137: "A marriage celebrated under fear is not worthy of favor; nor should its validity be presumed in doubt." This is in accordance with the sacred pronouncements of the Congregation Séraphin, in decision 893, November, no. 33.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE BOND. On the other hand, the defender of the marriage will demonstrate that the new testimonies now presented by Anthony are not only contrary to the

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decision of the day...

[*Latin ed. p. 47*]

BOLOGNA. 47. The years elapsed since then have not rendered the matter inconsequential, but rather have served to further confirm the justice of that decision. The documents presented in the new summary consist of three letters, which, besides being presented extrajudicially, could rightly be rejected, and, according to the common saying of the forum, "what is not in the records is not in the world," reveal nothing about the alleged coercion of the father over the son, except for the letter of Peter Baruffi. This letter states that he, on several occasions, heard Count Anthony say that he would gladly enter into marriage with Countess Laura of Cortona, but that he was unable to do so due to the opposition of his father, who compelled him to enter into marriage with Countess Gozzadini. Therefore, Peter Baruffi saw nothing, but only speaks of hearsay, namely, of what he heard from the servant Betti, who, however, was not brought to trial. From this, it follows that the aforementioned Baruffi was not present in the Gozzadini family while Anthony was a young man; otherwise, he would not have gone to the servant Betti to testify about what he could have seen with his own eyes; and therefore, everything that he further affirms about the character of Count Anthony, about his great fear of his father, and about his submission to his father's will, should be referred to the time when Count Caietan was already elderly. Furthermore, the same witness adds that Count Caietan, for particular reasons, not expressly stated, declared that he would obtain authority from the ecclesiastical authority to prevent the marriage from being declared null, which contradicts the truth, the defender points out, since it is known that Count Caietan, after the flight of the Gozzadini, that is, from the year 1870, did not leave any stone unturned to undermine this marriage, and in vain he consulted with the most distinguished and ecclesiastically eminent men. Moreover, little weight can be given to the enigmatic letter which Count Anthony gave to Joseph Zucchini on July 29, 1863, which was gladly seized by the opposing party, as it demonstrates Anthony's affection for another young woman of Bologna. Indeed, from this letter, it does not appear that under that name, "la minaccia,"...

[*Latin ed. p. 48*]

48. BONONIEN. He precisely mentions the young woman Laura Malvezzi; but even granting this, it does not necessarily follow that Anthony, two years later, unwillingly married Gozzadina, since the will of a man, and all the more so of a young man, is a wandering thing. Although Count Anthony Zucchini sometimes intended to marry Laura Malvezzi, the defender denies that any bonds were formed. Indeed, among the witnesses presented by the opposing side in this matter, the

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most prominent is Laura's own sister, Anne Malvezzi, who, questioned by Count Francis Massei, responded that signs of affection existed between Count Anthony and her sister; but that no actual negotiations for marriage ever took place. Paula, a witness presented by the opposing side from the families of Zucchini and Brunetti, gives almost the same testimony. Therefore, the defender argues, the premise of Barbosa, the sacred Auditor, does not hold true! Supported by authority from the opposing side, namely, the desire to marry another woman, is the desire not to marry Eleonora; whereas, Anthony never declared that he wished to marry Laura, nor did he ever contemplate it; otherwise, if any obstacles were present, he would have overcome them with the efforts and assistance of the priests Bonucci, the pedagogue, and Biagi, the tutor, and especially of his friend Joseph Zucchini, who in the aforementioned enigmatic letter seems to have taken upon himself the task of preventing any suitor from approaching Laura! And who declares himself to be Anthony's friend, indeed, his brother. Then, the defender proceeds to examine another letter from Caietan, and he states that it clearly emerges from the very words of the letter that Count Caietan is not inhuman, cruel, and urging his son to feign, as the opposing orators claim, but is entirely advising his son to love and be sincere towards his parent. Nor does Caietan repeat these things without serious reason, but he does so because his son was stubbornly refusing the priest, the pedagogue. Nor does the letter given by Count Caietan to his son on March 28, 1863, support the plaintiff more than it supports the defendant; in it, indeed, he complains that his son is proving to be unteachable and disrespectful towards his father.

[*Latin ed. p. 49*]

BOLOGNA. 49 And he notes that it is not rash to suspect that this letter was sent to the son, since, as is testified by the priests Bonucci, Philip Brunetti, and Peter Melossi, the son was ejected from the dining room by his father, in the presence of a guest, for having uttered frivolous words at the table. However, if Peter Melossi, a servant, claims that this happened because the son refused to marry Gozzadina, this testimony deserves no credence; indeed, the event of the expulsion occurred before March 28, 1863, before Anthony had traveled through Europe; whereas, according to the Gozzadina family, negotiations for the marriage with Gozzadina began in the year 1864. Furthermore, if the event narrated by Peter Melossi is different from that which the Count of Caieta reproaches to his son in the aforementioned letter, this must be demonstrated by the plaintiff, and it could easily be done if he were to deviate from the method he has set for himself, namely, by presenting only one or two letters, omitting the others. Finally, concerning the recent testimony of Alphonsus Stanzani, who claims to have learned of the Count of Caieta's considerable financial dealings, the defender observes that no credence should be given to

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the words of Alphonsus Stanzani, who recently examined the codices and commentaries. From this, it is clear that the patrons of Count Anthony, who spared no effort to demonstrate the Count of Caieta's financial dealings, would have readily presented these same codices and commentaries to the Bolognese judge and advocate, if the defense could have hoped to find support for its case in these same documents. Moreover, everyone knows what is required for codices to be considered valuable. "If, as Gregory IX states in chapter fin. De fide instr., copies are requested because of their age or for a just reason, they must be presented before the ordinary judge or a delegate appointed by him; and if, after careful examination, he finds that they are not defective in any way, he shall order that copies be made, which shall have the same authority as the originals." This is consistent with Menoch. cons. 7, n. 1. Regarding the second point of the argument, it is noted that in order for the marriage to be declared invalid on the grounds of force and coercion, it is necessary that the plaintiff demonstrate the facts, the torments, the threats, the... (Acta, Tom. XXIV, fol. CCLXXVII, 4).

[*Latin ed. p. 50*]

50. BONONIEN. The circumstances under which he, against his will and with reluctance, was led into marriage, as indicated by the testimony of Barbosa, Volume V, decision 127, number 2, which is consistent with the statements in Conscius, De spons., chapter 8, sections 61 and following. However, the opposing advocates bring nothing of this to light, but are content merely to exaggerate the threats of disinheritance, which the defender of the marriage has already sufficiently refuted in the preceding observations. Here, it is worth noting that the opposing side falsely claims that the ancestral trust and the mother's dowry were accumulated in the paternal estate, and that, therefore, Anthony could not have received anything from them while his father was alive, without a legal separation of assets. And this falsehood is refuted by Ferdinando Belvederi and William Masi, who were the secretaries of the Count of Caietana. Nor do the opposing advocates resort to a better argument, namely, the fear of reverence, which, if it had been present, would certainly not have allowed the priest, Bonucci Anthony, the instigator of the marriage, to remain silent, yet he professed to know nothing. But, the defender continues, even if it were proven that, in the case of the father's absolute command to the adolescent to marry Gozzadina, and even if it were proven that there were constant and insistent persuasions, indeed even threats and torments, nevertheless, according to the Doctors of the Church, these things could not be taken into account unless it could also be proven that Anthony could not have avoided the impending evils, either by himself, or through superiors, or through friends. Salmaticenses, in tract. De matrim., chapter IX, point I, number 18; Sabellius, summ., divers., tract. § metus, number 3; and Angelus, verb. Metus, number 5, provide the reasoning: "Let it be imputed to him who could

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easily have avoided the fear, if, through that fear, he did something." Moreover, Anthony had at his disposal not only the Archbishop and the parish priest, whose voices and advice the Count of Caietana held in such high regard, but also a large and distinguished group of friends, relatives, and blood relatives, among whom the esteemed Joseph Zucchini, Anthony's closest and most beloved friend, stood out, who cherished the love of his uncle for Malvezza.

[*Latin ed. p. 51*]

BONONIA. 51. Quod Anthony erat maxime dispositus ad adiuvandum, ut supra dictum est. Sed ad ostendendum quod Anthony Gozzadinam perdiderat, et quod ei signa amoris certissima, privata et publice, dedit, sive cum de matrimonio agebatur, sive in ipsa celebratione matrimonii, sive postquam matrimonium consummatum erat, omissis numeris innumerabilibus et circumstantiis decisivis, quae in prima sede iudicii enucleatae sunt, hic responsiones commemorat, quas ipse Anthony paroco, nunc vicario generali et Episcopo Sebastensi, qui viginti quattuor diebus ante celebrationem matrimonii consensum de futuro matrimonio interrogabat, dederat. Ex his enim clare patet quod Anthony sponte et libere matrimonio consentivit. Si enim nunc profiteretur in his responsionibus mendacium fuisse, defensor vinculi ei opponit cap. IO *De proh.* Innocentii III, ubi legitur inter alia: « Cum nimis indignum sit (iuxta legitimas sanctiones), ut quod sua quisque voce dilucide protestatus est, in eodem casu proprio valeat testimonio infirmare. » Nec valet obiurgare, quod Anthony nulla frueretur libertate, propinquis et patre praesentibus; quandoquidem, notat defensor, non constat sponsos non in conclavi, absque testibus, sed coram propinquis et parentibus excussos esse; immo, exploratum est, comitem Caietanum, magnificati metus auctorem, ne ad domum quidem Gozzadini, ubi sponsalia facta sunt, perrexisse, ut fidem facit praesul Zoccoli, quem iudex ex officio rogavit. His aliisque adnotatis, et praesertim de argumentis ferventis amoris, quae Anthony per quinque annos continuo uxori suae exhibuit, defensor vinculi, absque mora, confirmationem sententiae primae praestolatur. Quibus pro utraque parte delibatis, propositum fuit enodandam sententiam: Dubium an sit standum vel recedendum a decisis in casu. RESOLUTIO. Sacra Congregatio Concilii, omnibus ad novum examen revocatis, sub die 30 mensis Maii 1891 sententiam confirmavit, rescribens: In decisis.

[*Latin ed. p. 52*]

52 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF QUEBEC, OR THE CONGREGATION OF THE SERVANTS OF MARY IMMACULATE, CONCERNING AN APPEAL AND THE VALIDITY OF A DECREE. Dated March 13, 1891. SUMMARY OF THE FACTS. A certain Charles Alfred Mary Paradis, a professed priest of the Congre-

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gation of the Servants of Mary Immaculate, was sent by his superiors to the diocese of Octave, in order to establish a small mission in the town commonly called N. D. du Desert. However, disregarding the commands of his superiors, who had no intention other than to provide spiritual assistance to the inhabitants, he devoted all his efforts to developing that region. Hence, without the knowledge of his superiors, and even against their will, he began to enter into contracts and to buy and sell land. Furthermore, not content with this, he brought certain merchants, commonly known as Gilmour, before the secular courts, because these men were cutting down trees that were located within the boundaries of the lands that he had acquired. This manner of acting on the part of the religious, Alfridus, was the cause not only of disputes arising between the government and the aforementioned Gilmour, but also of scandals among the faithful, which grew more and more serious, especially because public newspapers, which the religious had used to disseminate information, distorted the nature of the matter and turned it into a political issue, demanding that either the religious himself, or a government minister named Rass, should receive due punishment. The matter was in this state when the Provincial, in order to put an end to it, managed to have the religious, Paradis, whose rash and imprudent actions had caused the disturbance, sent from that diocese to the province of the United States, with the firm hope that, through his removal, peace would be restored.

[*Latin ed. p. 53*]

QUEBEC. P. Paradis graviter toleravit hoc, unde R. P. Generalis appellationem ad se movit contra actiones P. Provincialis. Verum, P. Generalis, P. Provincialem diligenter cognoscens, in hac re recte se gerentem, die 10 Aprilis 1888 respondit, praescribens ut vel Congregationem relinqueret, cui sua agendi ratione dedecori erat, vel, ephemeridibus silentio imposito, quaestionibus finisset et suorum superiorum imperiis se subiiceret. Hoc P. Generalis responso se praegravatum sentiens, supplicem libellum, S. Congregationi de Propaganda Fide adivit, quae, re mature perpensa, appellationem reiecit, mandans ut orator superiorum iussa exequeretur. Accepto S. Congregationis rescripto, P. Provincialis non parvam difficultatem creavit, ut oratorem ad meliora consilia adduceret. Verum, cum ipse magis et magisque in sua obstinatione perseveraret, tandem aliquando e domo religiosa per vim ejectus est. Orator, victus sed non fractus, novam appellationem paravit, quam hac vice S. Congregatio Episcoporum et Regularium movit, petens ut appellatio admittiatur, et regulari processu instituto, et Superioris Generalis praecepto nullo et irrito renuntiante, ipsemet in religiosam familiam, a qua expulsus fuerat, restitueretur. Acceptum libellum S. C. Episcoporum et Regularium die 12 Ianuarii 1889 remisit Emo. Archiepiscopo Quebecensi, ad informationem et votum, audito P. Provinciali. Eo quo par erat obsequio, Emo. Tacherau

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die 16 Februarii ex parte sua respondit, consultius fore, ut P. Paradis a voto obedientiae et paupertatis dispensaretur, et praevia absolutione poenae suspensionis ipsi infligtae, facultas indulgeretur inveniendi sibi benevolentem Episcopum, qui ipsum in sua Dioecesi accipere haud dedignaretur. Ex parte sua vero, P. Provincialis, postquam asseruerit, supplicem libellum a P. Paradis S. C. Episcoporum et Regularium oblatum mendaciis et falsis interpretationibus infestatum, et factum natura sua simplicem et obvium, ex ipsius agendi ratione, puerilem.

[*Latin ed. p. 54*]

54. QUEBEC. Because certain individuals, seeking to shield the public and themselves from a pernicious scandal, petitioned that the prayers of the aforementioned [Father Paradis] be rejected from the threshold of judgment, and that the burden be placed upon him to condemn the writings, injuries, and calumnies which had provided an opportunity for scandal to the faithful, especially because, with his consent, public newspapers had become involved in this matter. However, despite these objections, the Sacred Congregation of Bishops and Regulars, under the direction of Father Paradis, sought to restore him to the favor of his superiors. But when Father Paradis presented two proposals which could not be accepted, a response was issued on March 26, 1889: "Negatively to both"; and, by order of the Sacred Congregation itself, the matter was transmitted to the Examining Judge for his opinion. Furthermore, the Examining Judge, considering the principal facts imputed to Father Paradis by the public, and noting that these were well-known and admitted by himself, with regard to the formal process, responded that this case could not proceed because of a well-known principle of law, namely, that in notorious cases, the order of law is not observed. *Farinae, quaest. 2, n. 60; Reiffenstuel, vol. V, p. 24, n. 253*. And, he added, in the present case, if a procedure were necessary, it could only be an economic one, not one that would follow the canonical course of law. Regarding the appeal implored by Father Paradis himself, he observed that, in this matter, the Superior General and his Council had proceeded according to the specific rules of the Institute, either through an extrajudicial or disciplinary process. Therefore, a properly constituted appeal could not be admitted; indeed, it can only be interposed against a judgment formally pronounced. He also noted the reasons for the grievance presented by Father Paradis, namely, that the Superiors of the Institute had proceeded against him unheard and undefended, and that these reasons did not appear to be just or supported by truth. Since the Provincial testified that he had received the defense of Father Paradis; and furthermore, on April 10, 1888, a written order was issued to Father Paradis by the General, to which he gave no response, and instead, he appealed to the Sacred Congregation of Propaganda Fide against the actions of the General, which he refused to accept, and furthermore, he was ordered to

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submit to his superiors.

[*Latin ed. p. 55*]

QUEBECEN. 55 Furthermore, he observed that, in accordance with the provisions of canon law, the right of appeal or recourse to a higher authority belongs to him who considers himself aggrieved; but he added that, according to the same canonical provisions, an appeal is only admitted when it clearly appears from the records that a grievance exists, as is evident from the decree concerning Appeals of October 16, 1600, included in the *Collectanea* of Cardinal Bizzarri, and confirmed by the Most Blessed Benedict XIV in the Constitution *Ad Militantis* of March 30, 1742. Finally, he observed that, after the superiors of the Order of Oblates had demonstrated the reprehensible conduct of Father Paradis, as well as his stubborn and persistent disobedience to both the rules of the Institute and the prescriptions of his superiors, they had also reported that he had, for this reason, sought the assistance of the Most Holy Prince, in order that he might obtain rehabilitation and victory over the superiors of the Order, whom he calls his persecutors. But wise provision had been made against this evil by the aforementioned Supreme Pontiff in another Constitution, *Ad Coercenda*, of October 1, 1753, in which, according to the common sanctions of the sacred canons, it is expressly declared that an appeal must be made to the Holy See by the innocent, for the sake of just protection, and never by the guilty, for the purpose of committing further offenses, in defiance of their immediate superiors and to the detriment of ecclesiastical discipline. After hearing the opinion of the Judge Relator, the Most Reverend Bishop and Regular Canon wrote that the case should be put on file, along with the doubts which are written at the end.

Synopsis of the Discussion.

RIGHTS OF THE APPELLANT. It has been observed that, in law, it is permissible for an appeal to be granted from a lower judge to a higher one, whenever the one who brings the appeal feels that he has been unjustly aggrieved by the lower judge: chapter *Omnis Oppressus* and following, cause 2, question 6; and chapter *Pastoralis* 53, concerning Appeals. For the remedy of appeal is established for the defense of innocence and its protection.

[*Latin ed. p. 56*]

56 QUEBECEN. Thus it is. Chapter 6, § 1; furthermore, Chapter 15 concerning Appeals. Hence, the remedy of appeal must be granted to anyone who considers himself unjustly burdened. And this, even if someone interposes an appeal against a sentence to which he has sworn to submit, whenever he is unjustly oppressed by such a sentence. Chapter 8, and Chapter U concerning Exceptions. Having these legal precedents, when a petitioner considers himself unjustly harmed by a decree of expulsion from a

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religious Congregation; he cannot be denied the appeal he has requested. After this, proceeding to the decree of expulsion, the petitioner maintains that it is null and void, and devoid of any validity, because it was issued in violation of fundamental principles of law. He seeks to demonstrate this with several important reasons, the principal of which are: 1. that he was expelled on the basis of false and unproven accusations; 2. that his expulsion occurred at the very moment when he had sought refuge in the Holy See to prove his own innocence, and before this Holy Tribunal had examined the matter and rendered a judgment. He states that all of this is clearly evident, first from the account of his expulsion, written by a certain lay religious and recorded in the proceedings; and second, from his letter of response to Father Guillard, the Superior at that time, which was sent.

CONCERNING THE JURISDICTION OF THE GENERAL DEFINITOR. On the other hand, Father Martinet, the General Assistant, argued that the appeal requested by Father Paradis could not be granted, and that the decree of expulsion should be maintained in full force, since it was issued by the General Superior, who, not only in virtue of the Constitutions and Regulations of the Order, but also in virtue of Pontifical Law, and even in virtue of the decree of the Sacred Congregation of Bishops and Regular Canons, had the power to expel. Regarding the rules of the Institute, the General Assistant observes, from the context of the very rules themselves, that the General Superior and his Defintor-

[*Latin ed. p. 57*]

QUEBECEN. 57. Hoc potest esse factum, ut religiosus sit dimissus ab Instituto, si coram Deo iudicatur, eum ad bonum peragendum et gloriam Dei in societate procurandam minime idoneum esse, vel si ille praemonitionibus omnibus contumax obstinate perseveret, praesertim vero si verbo vel exemplo occasionem peccandi fratribus praebeat. Et licet Regula suadeat ad hoc extremum deveniendum non esse, nisi cum summa prudentia et temperamento, ut existimationi et famae religiosi eliciendi consulatur; tamen subdit hanc rationem haud obstare debere, quominus Congregatio eruat a se membrum sibi dedecorum vel nocivum, et mandat Superiori Generali, ut hoc ingratum ministerium Superioribus localibus per Provinciales aut Missionum Vicarios committat. Idipsum nec minus luculenter evinci ait ex praescripto legum ecclesiasticarum, quae Institutis religiosis facultatem indulgent bono communi consulendi, a se eiiciendo religiosos, qui sua agendi ratione impedimento sunt, quominus societas haec pretiosa bona consequatur. Et si agatur de Institutis in quibus vota tantum simplicia emittuntur, permittunt insuper, ut eiectio decernatur, quin opus sit, ut formalis processus instruatur, iudicii forma observetur, et sententia canonica proferatur. Tandem hoc Superioris Generalis ius inniti, "contendit, decreto diei 5 Ianuarii 1866 a S. C. Episc. et Regul. edito, ubi ad rem haec scripta leguntur: « Liberum erit Superiori Generali

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socios ab Instituto dimittere, quoties iustae causae intercedant, et accedat consensus assistentium generalium. » Cum igitur in casu iustae causae intercesserint p. Paradis ab Instituto dimittendi et concors assistentium generalium consensus accesserit, nullo pacto ambigi posse concludit, quin decreti expulsionis validitas decernatur. Hisce aliisque perpensis, proposita fuerunt enodanda sequentia.

[*Latin ed. p. 58*]

58 QUEBEC. Doubt I. Whether there is a place for an appeal in this case? And to the extent that it is affirmative. 2. Whether the decree of expulsion, issued by the General Definitorium against Father Paradis in this case, is upheld? RESOLUTION. The Holy Congregation of Bishops and Regular Canons, after examination, on March 13, 1891, judged it fitting to respond as follows: Regarding the first point, provision will be made in the second. Regarding the second point, it is affirmative, and moreover, with the following intention: Write to the Most Reverend Archbishop of Quebec, so that he may prohibit Father Paradis from establishing the Society of Saint John the Baptist or any other institution, and that he may inform the Bishops of his Province of this matter. FROM WHICH THESE CONCLUSIONS ARE DRAWN. I. An appeal from an inferior judge to a superior judge is admitted, whenever the appellant feels himself unjustly burdened. II. The remedy of appeal is established for the defense of innocence and its protection; therefore, it must also be granted against a sentence, even if one has sworn to abide by it, whenever one is unjustly oppressed by such a sentence. III. Therefore, since the Rules of the Congregation of Oblates of the Immaculate Mary leave the judgment of the justice and propriety of the causes for which a religious may be dismissed from the Congregation to the discretion and conscience of the General Superior and his Assistants, IV. And if such just and reasonable causes exist, it is permissible for the General Superior to dismiss members from the Institute, provided that the consent of the General Assistants is obtained. V. Nor is a process or form of judgment required to determine dismissal, but it is possible to proceed to it solely by examining the truth of the facts.

[*Latin ed. p. 59*]

59. PARMA. REGARDING EXEMPTIONS. On March 13, 1891. SUMMARY OF FACTS. In the diocese of Parma, near the town commonly called Bercelo, there exists a house intended for use as a monastery, with an attached public oratory, which received its name from the image of the Virgin to whom the title of "Delle Grazie" (of Grace) is given. The Most Reverend Vitalis Loschi, then Bishop of Parma, on May 22, 1840, decreed that the aforementioned oratory should be subject to him, and therefore free from the jurisdiction of the pastor or rector of that town. Furthermore, not long afterwards, having obtained the necessary approvals, he converted

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the aforementioned house into a seminary, and by a decree issued on August 29, 1842, he established that the new seminary and oratory should be immediately subject to his jurisdiction; that only the rector of the seminary should exercise jurisdiction there, with the faculty of delegating a priest to perform the sacred functions. He also decreed that neither the rector of the town, nor any of the canons of the Collegiate Church, should have any right, and that all sacred functions and processions which were held with the image of the Virgin belonged exclusively to the rector of the seminary, so that he alone could raise the cross and lead processions through the customary streets of the town. However, after the Most Reverend Loschi had passed away, his successor, the Most Reverend Neuschel, on November 12, 1851, decreed that the rector of the seminary, for the time being, on the feast day of the oratory's titular saint, should invite the rector and canons of the Collegiate Church of the town to the sacred functions; that the clergy of the seminary should first proceed to the Collegiate Church and then, together with the people, to the parochial church; that the cross of the Collegiate Church should be raised only there; and finally, that after the sacred functions had been completed, they should return to the oratory, maintaining the same order. In addition to these matters, the Bishop confirmed a prescription of January 11, 1851, which concerned various functions to be celebrated both by the rector and by the canons of the place called Bercelo in the oratory of the seminary, and which imposed upon the clerics residing in the seminary the obligation to close the oratory on certain solemnities and to go to the parochial church, so that they might perform the sacred ceremonies there. In short, the Bishop imme-

[*Latin ed. p. 60*]

60. The parish priest of the place of Berceto subjected the oratory and seminary to his jurisdiction. The situation was as follows: because the parish church, due to the death of its titular pastor, the Reverend Dominic Villa, was without a pastor, the then-Bishop, on August 25, 1880, reinstated the decrees of Bishop Loschi. By virtue of the aforementioned decree, not only was the oratory of the public seminary again declared to be under the authority of the bishop, but also all parochial rights were granted to the rector concerning those residing within the seminary grounds. Having done this, he ordered that precedence regarding processions, which took place outside the grounds of the oratory or seminary, belonged to the prelate; that festive functions, which were customarily held in the oratory of the seminary, should be celebrated either before or after the parochial functions; and finally, that both external clerics and those residing in the seminary should be required to serve in the parochial church on feast days, whenever they were invited, and with the permission of the director of the institution, without prejudice to discipline. Against this decree, on March 15, 1882, the priest Orsi, the current Prelate of the Congregation

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for Bishops and Regular Canons, presented a petition, requesting that it be declared null and void, not only because it harmed his rights, but also because it was causing old grievances and scandals to be renewed. In response to this petition, the Bishop, as was customary, was requested to give his opinion, and on May 29 of the same year, he responded that what the Prelate of the Congregation for Bishops and Regular Canons had stated was untrue. He stated that he had been moved to promulgate this decree, firstly, so that the laxity of discipline within the institution would no longer be tolerated, since the clerics residing in the institution frequently had to go to the parochial church, which was located about five hundred paces from the seminary; and secondly, because the Prelate himself demanded that external clerics should serve in the functions of rest, which were customarily held on weekdays, at the time when readings were being given. In addition to all this, he added that this decree had been issued because the parochial church was vacant; therefore, the Prelate Orsi should not have accepted the office of parish priest, if he did not accept the aforementioned decree.

[*Latin ed. p. 61*]

61. While these matters were being considered, it happened that the Bishop passed away from this life; hence, the judgment remained suspended. However, not long afterward, it was resumed by Bishop Miotti, who, having barely been appointed to that see, appealed to the Sacred Congregation of Bishops and Regular Canons, requesting that, in order to extinguish the evils and quarrels that had afflicted the parish of Bercelo, the chapel and the attached seminary be permanently separated from the parish, and that all parochial rights over the chapel and seminary, as well as over the individuals residing in the seminary, be conferred upon the rector for the time being. The Synodal discussion, influenced by the opinion of Lucius Ferraris, who in his work *Bibliotheca canonica*, etc., vol. 1, words Dismembratio, no. 1, states: "Dismembratio is a certain kind of alienation," and also by the authority of the Sacred Rota, part 7, recent decision 68, no. 1; and part 10, decision 90, no. 8, in which, under no. 9, regarding dismemberment, it is written: "And thus, it requires a necessary cause and evident benefit to the Church." Furthermore, the Bishop's information, which states that only through the dismemberment of the seminary and its chapel, and their removal from parochial jurisdiction, can the tranquility of the parishioners of Bercelo, the peace of the clergy, the proper administration of the seminary, and its health and prosperity be obtained, does not allow for any doubt regarding the presence of a necessary cause and evident benefit to the Church. Moreover, he states that such a dismemberment is not a new thing, and that it has occurred in several seminaries in Italy, especially in the seminary of Venice. Based on these considerations, both in fact and in law, the Bishop concludes that the

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dismemberment of the seminary and its chapel, and their removal from parochial jurisdiction, should be decreed as being useful and necessary.

THOSE THINGS WHICH SEEM TO FAVOR THE PREPOSIT. However, on the other hand, the Preposit, to the best of his ability, maintains that the dismemberment of the seminary and of the chapel itself from the parochial jurisdiction, which has been invoked by the Bishop, would be a source of litigations and discord, and that it is necessary to maintain the seminary and the attached chapel under the jurisdiction of the Preposit.

THOSE THINGS WHICH SEEM TO FAVOR THE BISHOP.

[*Latin ed. p. 62*]

62. CARMEN. It was to be considered as if decreed by the Bishop Neuschel on November 22, 1851. It is asserted that, for almost thirty years, nothing occurred in consequence of the aforementioned decree that disturbed the peace and harmony existing between the seminary and the parish. Conversely, the decree of August 25, 1880, was the cause of old questions and disputes arising between the seminary and the Prefect, which the aforementioned decree of Bishop Neuschel had resolved and completely extinguished. Having briefly considered these matters for both sides, the following question was posed: In the case of the locality of Berceto, is the oratory and the annexed seminary to be considered as part of the territory of the parish?

RESOLUTION. S. O. Episc., and Regul. under the date of March 13, 1891: Regarding the aforementioned question, it was decided to respond as follows: "Whether and how the decrees of August 28, 1880, and April 18, 1881, are to be maintained?" It was judged that the answer should be: "Affirmatively, and furthermore."

FROM THE SACRED CONGREGATION FOR RITES. Decree of Beatification and Canonization of the Venerable Servant of God, Joanna Elizabeth Bichier des Ages, foundress of the Congregation of the Daughters of the Cross, commonly known as the Sisters of St. Andrews. The writings attributed to the aforementioned Venerable Servant of God, Joanna Elizabeth Bichier des Ages, which were presented to the Sacred Congregation for Rites, in order that a review and examination thereof might be instituted for the purpose of proceeding with the decrees, are described in the following list (followed by a list of writings).

With the proposal of the Most Eminent and Reverend Lord Cardinal Raphael Monaco La Valletta, Bishop of Ostia and Velletri, the aforementioned question regarding the review of these writings was presented at the meetings of the Sacred Congregation for Rites held at the Vatican. After the aforementioned Eminent Prelate's report, and after mature deliberation by the Most Eminent Fathers presiding over the Sacred Congregation for Rites,

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and after hearing the Reverend Father D. Augustine Capram, Promoter of the Faith, it was judged that: "Nothing stands in the way of proceeding further, reserving, however, the faculty for the Promoter of the Faith to object, if and to the extent that it is legally permissible."

April 23, 1891.

[*Latin ed. p. 63*]

From the Sacred Rituals, number 63. After these matters were presented to the Most Holy Lord Leo XIII through a report from the Secretary of the Sacred Congregation of Rituals, His Holiness approved and confirmed the decree of the same Sacred Congregation. On May 13th of the same year. Cardinal Aloisi-Masella, Prefect of the Sacred Roman College. L. Vincentius Nussi, Secretary of the Sacred Roman College.

Decree of Beatification and Canonization of the Venerable Servant of God, Joanna Elizabeth Bichier des Ages, foundress of the Congregation of the Daughters of the Cross, commonly known as the Sisters of St. Andrews.

Since the Most Holy Lord, our Pope Leo XIII, benignly granted that the matter concerning the signature of the Commission for the introduction of the cause of the aforementioned Servant of God, Joanna Elizabeth Bichier des Ages, could be considered in an Ordinary session of the Congregation of Sacred Rituals without the intervention and vote of the Consultors, although less than ten years had elapsed since the presentation of the Ordinary process in the Acts of the Congregation of Sacred Rituals, and neither the writings of the Servant of God had been thoroughly examined and reviewed, the Eminent and Reverend Cardinal Raphael Monaco, Bishop of Ostia and Velletri, Relator of this cause, at the request of the Reverend Father Raphael M., the Postulator of the same cause, appointed, having considered the Postulatory letters of several Eminent Cardinals of the Holy Roman Church, Reverend Prelates, and other men of ecclesiastical or civil distinction, who, having gathered at the Vatican on the day indicated in the Ordinary sessions of the Sacred Congregation, proposed the following question for discussion: Whether the Commission for the Introduction of the Cause should be signed in this case, and for the purpose of what is being considered? And the Sacred Congregation itself, after maturely considering all matters, and having heard the opinion, both spoken and written, of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided to decree: Affirmative, that is to say, that the Commission should be signed, if it pleases the Most Holy [Pope]. On April 23rd, 1891.

After these matters were presented to the Most Holy Lord, our Pope Leo XIII, through a faithful report from the undersigned Secretary, His Holiness approved the judgment of the Sacred Congregation and confirmed it, and with his own hand signed the Commission for the introduction of the cause of the aforementioned Venerable Servant of God, Joanna Elizabeth Bichier des Ages. On May 13th of the same year. Cardinal Aloisi-Masella, Prefect

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of the Sacred Roman College. L. Vincentius Nussi, Secretary of the Sacred Roman College.

[*Latin ed. p. 64*]

64 FROM THE SACRED CONGREGATION OF RITUALS, OF NULLITY OR NON-VALIDITY. The decree confirming the ancient practice, dating from time immemorial, concerning the cult offered to Pope Hadrian III, was requested by the Most Reverend Charles Borgognoni, the present Archbishop of Mutina and Abbot Commendatory of the Abbey of Saint Sylvester in Nonantola. With the aid of monuments, which he deemed sufficiently authentic and clear, he was able to demonstrate that, from time immemorial and long before the decrees of His Holiness Pope Urban VIII, public ecclesiastical worship had been offered to the aforementioned Supreme Pontiff, Hadrian III. He obtained from His Holiness Pope Leo XIII, through a decree of the Sacred Congregation of Rites dated January 18th of the current year, that in such a case, an exemption should be granted from the ordinary and legal investigation, since the series of documents collected with care and diligence by the Most Reverend Archbishop completely suffices. These documents were subsequently presented in the authentic form in the records of the same Sacred Congregation; however, a preliminary explanation was to be written by the Reverend Father, the Promoter of the Holy Office, in place of objections. Therefore, since, at the request of the Most Reverend Monsignor Julius, Marquis of Campori, the Ordinary Postulator of this cause, established in the ordinary meetings of the Sacred Congregation of Rites, and signed on the day in question at the Vatican, I, the undersigned Prefect and Relator of the aforementioned cause for the same Sacred Congregation, proposed the following question: Does it appear that there is an exception to the decrees of His Holiness Pope Urban VIII in this case, and regarding the matter under consideration? The Eminent and Reverend Fathers entrusted with safeguarding the Rites, after duly examining the documents and after hearing the Reverend Father Augustine Caprani, Promoter of the Holy Office, judged it necessary to respond: Affirmative, that is, that there is an exception to the decrees of His Holiness Pope Urban VIII, on June 2, 1891. Concerning which, a report was subsequently made by the undersigned Secretary to His Holiness Pope Leo XIII, and His Holiness, approving the response of the Sacred Congregation, confirmed the ancient practice of public ecclesiastical worship offered to the aforementioned Saint Hadrian III, on the 10th day of the same month and year. Cardinal Aloisi-Masella, Prefect of the Sacred Congregation of Rites. L. S. Vincentius NussI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 65*]

65. LETTER of the Most Holy Pope Leo XIII to the Archbishops and Bishops of the Kingdom of Portugal, concerning the holding of annual

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special Episcopal gatherings, in addition to the assemblies in which lay faithful also participate, through which the good of the faith is wonderfully promoted, which among many is in danger. The pastoral vigilance, with which you strive to defend and foster the strength of religion, has provided Us with a new and illustrious argument, namely the recent distinguished gathering held in Bracara [Augsburg], of which We were happily informed by a most grateful letter from those of you who attended that assembly. Indeed, We were delighted in reading it, both by the zeal and diligence of the Pastor of the city that received the assembly, since he was the principal promoter of the proceedings and so skillfully presided over the gathering that it achieved its desired results; and also by the studies and piety of the Bishops who joined him, or of those grave and worthy men who, in their place, diligently performed their duties at that assembly; and finally, by the great number of most excellent men from the clergy and the faithful people, distinguished by doctrine, virtue, and authority. This gathering is all the more pleasing to Us because there was a remarkable agreement of minds in deciding matters that would greatly contribute to the growth of the Church and the progress of the Catholic cause. We do not wish to conceal that, among other things which were suitably determined by unanimous votes, in accordance with the time and place, it brought Us great joy to learn of the sentiments that the assembled representatives declared with complete devotion to this Apostolic See, and of their eagerness to ensure that due honor be given to it, and that nothing be diminished from its majesty and rights. We are certainly hopeful that those things which were achieved and established in that assembly, when diligently and constantly carried out, will yield a rich abundance of salutary fruits; and We cannot but remember that a vast field still lies before you, awaiting your efforts and industry. For this reason, although We have not long since addressed you in letters concerning the state of the Catholic cause and its needs in the Kingdom of Portugal, and regarding the course of action to be taken to conveniently address them, We deem it fitting to add some things to those same letters, which We believe it is right to communicate to you, so that, when a favorable opportunity for writing has been offered to you, We may not seem to have been negligent in fulfilling Our duty. Acts, Vol. XXIV, p. 677.

[*Latin ed. p. 66*]

66 My beloved sons, Venerable Brothers, it has come to Our attention that within the Braga district, the very faith itself is being called into question by many; therefore, it is necessary to exert every effort to prevent ignorance or indifference from taking root in hearts, or from flourishing, but rather to ensure that faith remains firmly established in hearts, and that it produces a bountiful harvest of good works and the sweetness of virtuous practices. We must strive against the efforts of the enemies of truth, lest

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the corrupting influences that spread widely from their examples and their wicked teachings take deeper hold. Many wounds must be healed that this impious labor and the calamities of the times have inflicted upon those entrusted to your care; many things must be awakened that lie dormant; and many needs of the faithful still press upon them, which, if they cannot be completely removed, at least must be alleviated. These matters, as We have said, which demand your concern and your diligence, can be more effectively and conveniently addressed if a closer concord is established each day among the sacred prelates, and if their efforts are more closely united in exploring the needs of the clergy and the faithful, in conferring counsel, and in deciding upon those things that they have jointly deemed expedient, both with regard to the individual dioceses, and with regard to those matters that are of wider scope and greater importance, in which the prosperity and salvation of the entire nation are at stake. The opportunity for this closer association among the sacred prelates was not hidden from those who convened in Augusta Braga; therefore, We have learned with approval of the distinguished deliberations of that assembly, which were aimed at fostering this very union, through which the faithful people expect and hope for greater and more lasting benefits from their prelates, who serve as their guides and leaders. However, to achieve this ultimate and lasting union, nothing is more effective than the practice and institution already adopted in other regions, namely, that in addition to the assemblies in which lay faithful also participate, such as the Braga assembly, special convocations of bishops should be held annually. We know that you are also inclined to adopt this practice, and We ourselves greatly desire it, because the benefits gained through such assemblies shine forth with a manifold and constant testimony of experience. Indeed, from the frequency of such assemblies, first comes that very concord and association of forces, which together can bring a glorious outcome to great endeavors; then, the prelates who gather are more and more inflamed to action, and are strengthened in their resolve.

[*Latin ed. p. 67*]

LETTER 67. Mature deliberation, illuminated by counsel and the exchange of wisdom, strengthens minds. Furthermore, these gatherings pave the way, not only for diocesan and provincial Synods, but also for a national council, whose celebration we greatly rejoice in, for long experience has demonstrated the utility of similar gatherings, and the prescriptions of the sacred canons strongly commend them. Moreover, following from what we have said, it is also most fitting that, in these annual gatherings of prelates, the laity, spurred on by new incentives, may more eagerly advance along this path, and that the gatherings themselves may serve to deliberate, exchange ideas, and, with united efforts, strive to defend the common cause of religion, and that those present may diligently

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carry out what they have learned and been urged to do by their pastors. And indeed, when you assemble in these annual gatherings, you will not lack for matters requiring your attention, in which you must diligently apply yourselves. For, besides the particular matters that may arise in individual dioceses, and which may be better addressed with the light of common experience, there will be ample scope for your deliberation and decision regarding those things that will be most beneficial for fostering the zeal of priests who are currently working in the Lord's vineyard, and for cultivating those students who will one day be called to serve in the House of God, with the light of solid knowledge, the seeds of ecclesiastical spirit, and, indeed, with all the ornaments of priestly virtues. Furthermore, your paternal vigilance will be exercised through a diligent inquiry into those things that will most contribute to the proper instruction of the people in the fundamentals of the faith, and to the correction of their morals, so that sound doctrine may be spread, and the seeds of virtues may be fostered, and so that works may be established that will pour forth the benefits of charity, and that those already founded may flourish with new growth. Finally, a most important matter will be presented to you for deliberation: the opportunity to establish and receive religious societies in the Portuguese Kingdom, a matter which we have seen to be of the utmost concern to all those who met in Bracara Augustae. Indeed, these societies will not only provide auxiliary support, as it were, to the clergy who cultivate the sacred military service of Christ in your dioceses, but, which is even more important, they will be able to provide Apostolic men who will perform the ministry of sacred missions in regions subject to the Portuguese dominion. The fulfillment of this task, along with...

[*Latin ed. p. 68*]

68 Letters will be beneficial for expanding the Kingdom of Christ on earth, and also for the honor and glory of the name of Lusitania. Indeed, your Princes and forefathers have attained lasting glory, having discovered vast regions and, with the favor and assistance of the Apostolic See, brought the light of the Gospel, together with the cultivation of a more refined humanity, to those lands. But in order that these illustrious endeavors may demonstrate their true nature and power, and not decline from their original glory and stability, it is necessary that they be supported by the constant vigilance and strength of outstanding men, who, filled with the divine Spirit and resisting the efforts of those who oppose them, will devote their whole effort and energy to ensure that these good things, which have flowed into those regions from the land of Lusitania, do not perish, but are revived with new vigor. These men must strive to confirm those who have already believed in God in their faith; and those who hold this faith firmly must also conduct themselves with honesty, devotion to religion, and the utmost diligence in fulfilling their duties; finally, that those who are still

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lying in darkness may turn to the knowledge of the true God and receive the light of the Gospel. Indeed, many such holy men can be provided by religious societies, whose members, according to the judgment of prudent men, to whom the experience of all ages lends its support, are accustomed to perform this ministry of salvation with no less success than diligence. For these men, with the reason and discipline of the societies to which they belong, and with the constant cultivation of their own virtues, are usually able to accomplish such great works better than others. We are indeed convinced that the Government of Lusitania, with a receptive ear, will embrace your counsel and will do much that surpasses all others, and will willingly remove all obstacles that hinder the freedom of religious societies, and will favor your endeavors with its authority, so that the Catholic religion, with its ancestral glory, may flourish widely and abundantly in Lusitania and in all places within its jurisdiction. We are more easily persuaded of this, because it is now known to everyone, as it is also known to you, what are Our intentions and desires in this matter. For, while these things are directed towards the good of religion, they also aim at the solid prosperity of the people of Lusitania. For this purpose, these parts of the Church were given by the Divine Founder, so that they may be a bond of peace and a safeguard of salvation in human society. Therefore, nothing is taken away.

[*Latin ed. p. 69*]

LETTER 69. The Church, indeed, safeguards and strengthens the authority of those who govern states, by adding the sanction of religion to the laws emanating from it, by recognizing due obedience to magistrates among the duties imposed by God, by exhorting citizens to abstain from sedition and any disturbance of the public order, and by teaching all to cultivate virtue and diligently perform the duties that are proper to their station and condition. Thus, the Church is the best teacher of morals, whose salutary discipline produces citizens who are upright, honest, pious towards their country, loyal to their rulers, and, in short, those who constitute a stable and firm foundation for the public order of the state, and who provide it with invincible strength to undertake all difficult and glorious endeavors. Therefore, the well-being and prosperity of the state are best served when the Church is allowed the freedom of action that it rightfully claims, and when a path is opened for it to widely display its beneficial powers, and to apply all that it possesses for the common good. Although this sentiment applies to all nations, it is particularly fitting for the Portuguese people, among whom the Catholic religion has long played such a great part in the formation of men's morals and character, in the fostering of studies of science, literature, and the arts, and in inspiring souls to perform outstanding deeds both at home and in the military, so that it seems as if it were a divinely given parent and nurse, fostering and nurturing everything that flourishes in that nation in terms of humanity, dignity, and glory. We have

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discussed this matter more fully with you in the aforementioned encyclical letters which we sent to you some time ago; it is enough here to recall that the power and virtue of religion must not suffer any decline, because the principles it transmits, by the authority of God, are not restricted by any time, place, or circumstance, since they pertain to the salvation and well-being of all peoples. Therefore, those great benefits and powerful safeguards which it has already brought to your noble nation can still provide even greater assistance for its salvation, prosperity, and glory. Especially at this time, when there is so much weakness or disturbance of minds that the fundamental principles by which the order and tranquility of human society are maintained are boldly attacked, and even called into question, it is clear how necessary it is for religion to be used as a defense, and for the precepts and teachings transmitted by it to be held sacred. Indeed, among all honest and upright men, there is no more certain or more suitable remedy against the evils with which...

[*Latin ed. p. 70*]

70. Our age is burdened by trials and dangers, and the Catholic doctrine, if received in its entirety and without corruption, and if it guides the course of men's lives according to its norms. Therefore, We are not mistaken, beloved sons, venerable brothers, that you, with the zeal of your ministry, the strength of your spirit, and your constancy, will hasten to contribute to the work that We have entrusted to you. Thus, through your efforts, you will deserve the highest praise and just congratulations for having done your best for the religion to which you dedicate yourselves so earnestly, and for your country and people, for which you desire, as We do, unwavering peace and that all things proceed according to reason. Meanwhile, praying to God that He may increase you in His gifts and favorably support your endeavors, We impart to you, to the clergy, and to the faithful, the Apostolic blessing, a testament of paternal charity, with all our heart in the Lord. Given in Rome, at St. Peter's, on the twenty-fifth day of June, in the year one thousand eight hundred and ninety-one, in the fourteenth year of Our pontificate. LEO P. P. XIII.

FROM THE SACRED CONGREGATION FOR THE COUNCIL, DISCIPLINE, AND THE REDUCTION OF BURDENS.

January 31, 1891.

Through summary petitions.

COMPENDIUM OF THE MATTER.

Jerome Raffaelli, canon of the cathedral church of Cingulana, reports that for several years he has been administering the affairs of the pious sodality of Suffrage; and that in this office, he has personally undertaken to fulfill a portion of the obligations of said pious sodality, except for the

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smaller stipends that are commonly offered; and for this reason, as he himself states, from the year 1883 to April of the year 1890, he omitted 172 Masses from the obligations attached to his canonry.

[*Latin ed. p. 71*]

CINGOLI. 71 Therefore, this [request] primarily demands the remission [of the debt], and furthermore, that the burden of 80 Masses, which is currently assigned to the same canonry, be reduced by half, alleging these two reasons: 1. because it is burdened by economic difficulties, 2. because the annual income of its benefice, which formerly exceeded 1250 florins, now does not reach 750. The argument that, even with significantly reduced revenues, a place exists, at least through an Apostolic Indult, for a suitable reduction of burdens, is a very common one and is accepted by the Sacred Congregation of the Council; and that assistance should be given to a priest who is in need and who has suffered some disadvantage from the office he has accepted: for he has celebrated a certain number of Masses below the synodal rate, and piety itself and justice suggest that this should be done, especially if, as in this case, the favorable opinion of the Bishop is added. Furthermore, the clause added by the founder cannot deprive the Holy See of its power, nor can it impede the exercise of that right which, by its very nature, belongs to the Supreme Authority in the exchange of pious intentions. Therefore, the words in question appear to mean only that the intention and the law of the testator should be expressed in another, more effective form, so that his will is not frustrated without a just cause. However, the particular will of the founder prevents the prayers from being heard, as it is prohibited by the law of prescription from requesting reductions of burdens. With these considerations in mind, the question was raised as to how the prayers should be granted. RESOLUTION. The Sacred Congregation of the Council, having considered the matter on January 31, 1891, decided that the following should be answered: Regarding the remission of the debt for the past, a certain number of Masses, a prudent judgment of the Bishop should determine; and regarding the future, the reduction should be to 40 Masses.

[*Latin ed. p. 72*]

72. CARTHAGE. DISTRIBUTION OF FUNDS. April 11, 1891. Chapter 1, Session 5. Concerning the Institution of Lectures. Forty years ago, a custom had prevailed within the Church of Carthage, whereby a canon theologian, who, instead of delivering the scriptural reading in the cathedral, taught sacred hermeneutics in the diocesan seminary, received an annual stipend of 825 livres for this work, and nevertheless, even when absent, received the daily distributions of the choir on the days when he delivered lectures. The chapter affirms that it had previously been unaware that a theologian had been granted this special remuneration; "but, to use the

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words of the Bishop, it is certain, if perhaps not the chapter itself, that the canons knew this well: for, besides two advisors for discipline, whom they call, and two of the four appointed to the economic administration of the seminary, who, according to the decree of the Council of Trent, are always taken from the ranks of the chapter, a canon was almost always the rector or director of the seminary; a canon was also the general economist; and canons were likewise the registrars of the episcopal curia, and all of these, for their service, understood the economic administration of the seminary, and therefore, it could not have escaped their notice the pension assigned from the revenues of the same seminary to the canon theologian." Be that as it may, recently, the chapter, in the preparation of a new set of statutes, in article 34, paragraph 9, decreed: "The theologian shall be considered present in the choir for the entire day in which he delivers a lecture in the cathedral; but only for the respective hours, if he lectures in the morning or evening in the seminary, just as with the other canons who have gone there to perform the duties of a teacher by order of the Bishop; but none of these shall receive the distributions if they have received a salary or gratuity for their work." But the Bishop, to whom the new chapter statutes were presented, in order that he might examine them according to the prescriptions of the law, and to give his approval...

[*Latin ed. p. 73*]

TO THE CARTHAGINIANS. 73. To strengthen the matter, he stated, "Having prudently deferred approval of article 34, as he himself said, I have decided to do so until the assessor of the Apostolic Nunciature has been consulted." In the meantime, however, the canon theologian repeatedly appealed to the Most Reverend Chapter with a written request, expounding the solution to the following doubts: 1. Is it permissible for the Bishop to assign a salary to the canon theologian from the revenues of the seminary, and for him to receive this salary due to the labor and hardship associated with the theological office? 2. Will the canon theologian also have the right to receive the daily distributions for the hours he spends reading in the seminary, in addition to the aforementioned salary? – And, if not, 3. Will the theologian be obligated to return the distributions or the assignment received in previous years? When asked about these matters, the Bishop replied that the assessor of the Apostolic Nunciature, whom he had consulted on this very matter some time ago, had recently responded to him that the regulation needed to be reformed, and that the entire matter should be left to the judgment of the Bishop. He also stated: "In establishing the regulation, about which the theologians are arguing, my intention is that the Chapter has exceeded its authority and gone too far. Authority: since there is no law that prohibits the canon theologian from receiving something in addition to the fruits and daily distributions for performing his office, it is up to the Chapter to determine whether the theologian, on

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a given day, hour, and place prescribed by the Bishop, is actually reading, or not. Thus, if he is reading, neither the Chapter nor the Bishop, but the sacred Canons, the Holy Pontiffs, and specifically Gregory XIII, are those who attribute the hours of reading to the theologian. What prejudice, therefore, does the Chapter have against the theologian, simply because he also receives a pension, which he himself does not pay? Would it not be more appropriate for the Bishops to change their approach, which they have followed until now, with the tacit consent of the Chapter? Therefore, to grant or deny the canon theologian, in addition to the daily distributions, a pension from the revenues of the Seminary, is a matter of the Bishop's judgment, whose..."

[*Latin ed. p. 74*]

74. CARTHAGINE. The administration of the Seminary, together with the duties prescribed by the Council of Trent, is entirely dependent on the authority of the Bishop. My predecessors, after careful consideration, believed that it would be very beneficial to the young men who study in the Seminary if some provision were made for a canon theologian to lecture on sacred Hermeneutics, and, rightly judging that, with increased labor, the compensation should also increase, they established a salary for the canon theologian to be paid annually from the revenues of the Seminary. I myself, since taking charge of the diocese six years ago, have considered this custom to be just and beneficial, and have maintained it until now, and I believe it is best to continue to do so. "Furthermore, the chapter did not exceed the bounds prescribed by the Council of Rome, held under Benedict XIII, title II, On Constitutions, chapter V, which has always provided a standard and rule on this matter. This aforementioned statute is not only approved by the custom that has been received and accepted for almost 40 years, during which theologians have lectured in this Seminary, but rather it directly contradicts it, and I do not see how it contributes to the increase of divine worship, the observance of holy discipline, and the benefit of the Church. "From all of this, I conclude that, if it were not just, based on strict justice, for the canon theologian to receive the compensation that has been paid to him until now, at least it is permissible for him to receive it, and it is all the more permissible for the Bishop to give the compensation, which he considers to be very beneficial for the instruction of ecclesiastical young men; but in no way is it permissible for the chapter to deny the daily distributions to the canon theologian who lectures according to the method prescribed by the Bishop. If, in my opinion, the theologian can lawfully receive the compensation from the revenues of the Seminary at present, then no further obligation remains regarding pensions that were given and received in good faith in the past. "On his part, the canon theologian maintains that the reception of a pension is permissible for him, and that he should not be penalized by the loss of distributions, for these reasons: 1.

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For the forty annual lectures that the canon theologian gives, according to the Council...

[*Latin ed. p. 75*]

CARTHAGE. 75. In Rome, under Benedict XIII, a lecturer is assigned, whose course lasts eight months, and who reads daily in the seminary; — 2. A lecturer in the seminary is obligated to take care of the students, both with regard to assisting the chair, and with regard to their progress in study, which entails no small annoyance and labor; — 3. He is obligated to prepare an annual program of readings for the examination of young men, and to examine them at the end of the course: to which is added the fact that, while the choir in the cathedral is ordinarily performed for one hour in the morning, the theological lecture in the seminary is extended daily to an hour and a half, and some of those present lose some of their customary distributions because of their attendance at the lecture. However, the chapter recalls, — among the canonical duties, which include the theologian, that a regional decree of 1852, issued with the consent of the Apostolic Nuncio, imposed the obligation of teaching or lecturing in the seminary; and that the actual theologian of the cathedral of Carthage expressly submitted himself to this office, and gave his consent by oath in official documents, in which he was assigned the duty of teaching the Holy Scriptures, in place, time, manner, and form at the discretion of the prelate. From these things, it is clear that the canonical theologian is held to the lectures in the seminary as part of his official duty. Furthermore, canons, commonly in Spain, receive an annual pension of 3000 livres from the government; while the canonical theologian, like the others in office, receives 3500; and this perhaps in view of the same duties incumbent upon them; otherwise, no one explains the true reason for such an increase. Finally, the chapters of Toledo and Hispalis, with the approval of their Ordinaries, have decreed that canonical theologians and other canons in office, who teach by obligation of their own benefice, should lose distributions, for the days and hours in which they teach, so that they may receive compensation for this purpose.

[*Latin ed. p. 76*]

76. CARTHAGINE. From a collection of acts, certain matters pertaining to law were brought to mind. And, first, from chapter 1, session 5 of the decrees of the Council of Trent, the following was found: "Those who teach Holy Scripture, when publicly teaching in schools, and the students who study in these schools, shall fully enjoy and possess all privileges concerning the receipt of fruits and benefices, even in their absence, as granted by common law." These words seemed to have a double possible interpretation. For, since the Council had said that those should fully enjoy all privileges concerning the receipt of fruits, it did not seem rash to

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infer that those who teach Holy Scripture, and among these, the canonical theologian, could legitimately receive not only the fruits which are strictly pertaining to the benefice, but also those which can be called accessory fruits, namely, distributions. However, the Holy Congregation [of Cardinals] held a different opinion. For, in the early years after the Council, the Holy Congregation, adhering to a stricter interpretation, consistently responded that canonical theologians do not profit from daily distributions, whenever it does not interfere with divine matters; cf. Petra in Commen. ad const. Innocentii V n. 53 and Fagnanus in cap. Licet De praebend. n. 116. Unless, as the same Cardinal Petra reports, later, when a recurring canonical theologian of the church of Eginatus inquired whether he could profit during the hours in which he read the daily distributions, the Holy Congregation, after consultation, decided: "Indeed, distributions are not due, but action should be taken with the Most Reverend [Cardinal]." Therefore, when the matter was brought before Gregory XIII, for the first time, a decree was issued by this Pontiff, stating that the canonical theologian should profit from the distributions for the entire day in which he reads, even if absent. However, this was a matter of grace; therefore, the Holy Congregation was accustomed to respond in writing, as in Tropien, May 9, 1597: "By the authority granted to it, the Holy Congregation grants that, on the day in which the theologian reads the Holy Scriptures by reason of his office, in accordance with the decree of the Council, he may receive the daily distributions, even if it does not interfere with divine matters."

[*Latin ed. p. 77*]

CARTAGENA. 7th of the month. "This dispensation, subsequently granted indiscriminately to all, with the passage of years, became a common rule and established law. However, the more stable and more prescribed the rule became regarding the presence of a theologian in the choir for the days on which the Sacred Scriptures are read, the more uncertain the discipline became concerning the other matters pertaining to the same theologian. Indeed, with regard to the place, time, and manner of holding these readings, and their number, nothing is precisely determined in the law. The Roman Council of the year 1725 prescribed at least forty readings in the Cathedral church itself; but this council, which was provincial, did not impose this law on other churches; therefore, outside the Roman province, the matter of the number, manner, place, and time of holding the readings was, for the most part, entrusted to the prudent judgment and custom of the Bishops, as is demonstrated by the examples and authorities cited by Lucidi, *Visitationes S. Lim.*, vol. 1, page 372, note 194, edition of 1882, and from the document from Sarsina, 9th of September, 1843, and from Pistoia, 23rd of March, 1839, among other causes presented before the Sacred Congregation of Councils. Consequently, in many places, the custom prevailed that the theologian,

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instead of giving the scriptural reading in the cathedral church, would explain the Sacred Scriptures, or even dogmatic or moral theology, to the clerics in the Seminary: and it is known that this practice, not only in Italy and elsewhere, but also in some churches of Spain, was introduced even before the year 1853, as evidenced by the acts of the Council of Cartagena, page *praesumptio sum*, before the Sacred Congregation of Councils on 26th of August, 1848. But after the year 1852, when, by a royal decree, recognized by the Apostolic Nuncio, of which the chapter of Cartagena also makes mention, it was recommended to the Bishops of Spain that the canonical duties of the *magister*, the *doctor*, the *penitentiarius*, and the theologian, or *lector*, be imposed in the seminary, it happened that, from that time on, the theologian, as well as the others generally in Spain, undertook this duty canonically. Indeed, the theologian teaching in the Seminary has the right to..."

[*Latin ed. p. 78*]

78. CARTHAGINE. The daily distributions are a matter concerning which a definite opinion exists, which the Sacred Congregation of Clerics, especially for the churches of Hispaniae, has often affirmed; sometimes for the entire day, and sometimes only for the hours during which [the text] is read, the Sacred Congregation has considered that theologians may receive the distributions. Thus, for example, in the aforementioned document of Caurien, it is stipulated: "that the canonical theologian should receive the entire daily distributions for the days on which [the text] is read, as if he were personally present with the choir, notwithstanding the chapter statute." Similarly, in Barchinone, on June 2, 1860, after the question was raised: "whether a lector enjoys the privilege of exemption from the choir for the entire day... with the acquisition of the distributions, even if he teaches only once in the morning or evening," the response was: "that he enjoys this privilege for the entire day on which the reading takes place." But, conversely, in Pampilona, on December 16, 1882, it was decreed: "In the case under consideration, the canonical theologian may be absent from the choir and may receive the distributions only for those hours in which he reads in the Seminary, with due consideration."

What reason, however, the Eminents and Reverend Fathers may have had for deciding that, in the two previous cases, the theologian should enjoy the choral privilege for the entire day, while in the third case, only for the hours, is not easily discernible from the documents of the Sacred Congregation. Whatever the reason, and notwithstanding this discrepancy, the principle that the theologian's presence, at least while he is actually reading, should be considered as part of the choir, always remains valid in these decisions. But if the question arises concerning the reception of distributions in a particular case, namely, when a theologian is given an increased salary for the purpose of teaching in a seminary, the answer

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does not seem easy. In Piacenza, to a Spaniard, regarding the question of whether a canonical master, for the service he performs in the seminary, has the right to receive an emolument, or rather, whether he should only receive the daily distributions, the Sacred Congregation of Clerics, on June 17, 1882, responded: negatively to the first part, affirmatively to the second.

(1) This question was referred to in Volume XV, page 463.

(2) The document from Piacenza is found in Volume XV, page 203.

[*Latin ed. p. 79*]

CARTHAGINEN. 79, which it is not possible to, nor is it proper to, apply to the case under consideration in this present section. For, in the first place, in Piacenza, the matter concerned a canonical master, not a theologian; and, to omit other things, the Sacred Congregation of the Council of Trent, in the Decree concerning Substitution and Distribution, dated August 3, 1889, seems to indicate that a theologian and other canons should not be considered to be in the same position with regard to their duties. For, having proposed the following questions: 1. Whether and for how long a canon with a doctorate, while performing the duties of teaching in a seminary, should be considered present in the choir; 2. Whether, in the case of illness, he is obliged to provide, at his own expense, someone to take his place in the duties of teaching; the Most Eminent Fathers, rather than applying the law pertaining to a canon with a doctorate to a theologian, preferred to postpone the resolution and ordered that information be sought, which, however, has not yet been presented to the Sacred Congregation. But further, in Piacenza, the controversy turned specifically to this point. The canon with a doctorate, who had undertaken the burden of teaching in the seminary from the beginning of his institution, admitted, more or less, that he was personally obligated to perform that duty, but denied that this burden had been attached to his prebend; and therefore, he maintained that, being absent without a valid reason, he was not entitled to the daily distributions, and even asserted that he should return those which he had received for 4 years; but, conversely, he maintained that he was entitled to a salary from the seminary. On the other hand, the Bishop argued that the burden of teaching had been attached to the canon's prebend; for the chapter statutes contained the following caution: "In the future, the prebendary will be charged with the duty of teaching in the Seminary, whatever the Bishop may establish and at the hour which he indicates; and those who undertake this duty will be considered present in the choir in the same manner and to the same extent as a canon lector." Therefore, in Piacenza, the question was whether a canon with a doctorate could claim a special salary from the seminary for the duty of teaching, in place of the distributions which were freely offered to him, but which he refused. In the present case, the dispute concerns whether a theologian, for the same duty, can receive a salary from the seminary, which is freely given to him, but which he may

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not be able to accept.

[*Latin ed. p. 80*]

80. CARTHAGINE. Quamobrem, a distributionibus, per privationem capitularum, mulctari debent. Ergo, punctum quaestionis in Piacentia, mihi videtur, paulum ab nostro diverso esse. Quid igitur, nisi si pro principio et regula iuris ponatur, theologum distributiones lucrari omnimodo et absolute non posse, quoties certum stipendium ob munus magistri ipse assequatur? Si enim non retineatur incompatibilia prorsus esse haec duo, videlicet acquisitionem distributionis, et certam, pro schola, retributionem, profecto contentio capituli in hoc themate non videtur valida neque admissibilis. Ad hanc autem quaestionem perducti, non tamen id patet. Nam licet in thesauro resolutionum S. C. C. exempla diligenter conquisita fuerint, nullum tamen inventum est, quod praesenti controversiae aptari ad unguem possit. Nec, praescindendo ab exemplis, iuridica ratio tam obvia datur, aut certa iurisprudentiae regula tam cito occurrit, quae in alterutram partem iudicium praevalenter impellat. Nam ex una parte, odiosum valde et ab aequitate alienum videtur suspiciose in dies scrutari utrum theologus ob munus magistri aliquam, etiam ultro datam largitionem scholae causa obtineat, et eo constito, distributionum dispendio eumdem statim mulctare, quasi si incapax esset acquirendi, et absolute a quacumque etiam sub donationis aut gratificationis titulo, retributione assequenda prohibitus. At ex altera parte, cum exemptio a choro cum acquisitione distributionis data sit theologo quasi ex gratia, atque ex supposito gratuiti magistri; et cum insuper ad peculiarem eius laborem rependendum, plerumque et etiam in casu de quo agimus, pinguiori quam ceteris praebenda ipse donetur; denique, cum exemptio a punctaturis strictae interpretationis videatur, eo quod in damnum ceterorum inservientium cedit; hinc sub hoc aspectu haud iniquum apparet theologum punctaturis subiici, quoties, sin minus, certo stabilique stipendio pro munere magistri augeatur. Dixi sin minus: nam, si de insueta et omnino extraordinaria largitione ageretur, ad extremum illud res urgenda forte non esset.

[*Latin ed. p. 81*]

CARTHAGENE. 81 And these matters pertain to the juridical reasons intrinsic to the theological office. Moreover, if it were permissible to further illustrate these matters with external analogies, it would certainly not be amiss to recall what is established by the received discipline concerning canonical benefices. Indeed, as is well known, it often happens that the spiritual care of souls resides with the chapter, so that the actual exercise of this care is carried out by someone from its ranks; or that the spiritual care of souls is attached to a particular individual. In both cases, this pastor of souls receives distributions during the time that he is engaged in pastoral

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ministry; and this even if he does not attain a certain rank for these duties: *Lucidi, Visit. SS. Lim.*, vol. 1, p. 310, last lines, edition. Furthermore, if it is deemed useful and just to favor canonical benefices in the service of the good of the parish, it should be considered that the office of teaching is no less beneficial and necessary to the Christian republic, especially in these times, in which it is so important to imbue clerics with sound doctrines, to instruct them in unshakeable principles and weapons for the defense of the faith, and to prepare them for every good work; and therefore, it would seem a just and excellent policy to receive both the theologian who teaches and the pastor who ministers with the same discipline and the same favor. Unless, that is, the rule established in favor of pastors, of which we have spoken thus far, is not absolute, but admits of an exception, and indeed of the greatest importance for the matter at hand. For in a particular case, when the spiritual care is attached to the chapter and entrusted to another for its exercise, with a certain fixed payment, then this person, if he happens to be a canon, is not absolved from the obligations, but must remain subject to them, if he is absent from the choir, although he has been appointed to the ministry of spiritual care. Thus, the Sacred Congregation of the Council, in *Melevitarla Fallentiarum*, September 13, 1862, cited by Lucidi, in the place mentioned above. However, a theologian who teaches in a seminary with a certain and appropriate salary can be almost equated to this mercenary. With these observations in mind, the following two points must be considered: *Acta, Tom. XXIV, page COLXXVIII, lines 6*.

[*Latin ed. p. 82*]

CARTHAGINE. Question I. Whether a canon theologian exercising the office of teaching in a Seminary may receive choral distributions for the days on which he teaches, notwithstanding that he receives a pension from the Seminary. And, concerning II. Whether and how provision should be made regarding distributions or pensions previously received by the same theologian in such a case.

RESOLUTION. The Sacred Congregation, after discussion on April 11, 1891, decided to respond as follows: To I, negatively. To II, to petition the Holy See for a remission regarding the past.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Masters of Seminaries who teach are not exempt from receiving choral distributions, even if they receive a salary for that purpose, so that they may not receive a double payment for the same work; which is condemned as being indicative of avarice, according to the sacred canons.

II. Canon theologians are obligated to perform their proper function if they give scriptural readings in the cathedral, according to the most recent Encyclical of Gregory XVI; in which it is stated that the Holy See is

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accustomed to congratulate Bishops if they have canon theologians who are properly fulfilling their office in public readings of sacred Scripture.

III. The Sacred Congregation has consistently sought to encourage canon theologians to give public scriptural readings after the Encyclical of Gregory XVI, among the most important measures.

IV. Regarding a canon theologian in this matter, who, for the sake of this office, enjoys a more substantial benefice, there is no question, and no doubt arises, concerning the giving of public readings of sacred Scripture; and therefore, he may continue to give hermeneutical instruction in the Seminary, in place of a scriptural reading in the Cathedral, notwithstanding the most recent jurisprudence of the Sacred Congregation (1)?

(1) *Recole*, Vol. IX, 505, BIO; Vol. X, 508; Vol. XIII, 87; Vol. XV, 463.

[*Latin ed. p. 83*]

83. MELEVITANA SPONSALIA. Die 30 Maii 1891. Sess. 25 cap. 1, De reform. COMPENDIUM FACTI. Iam bina denuntiationes, juxta morem, de matrimonio contrahendo inter Mariam Ellul et Carmelum Sammut, pagi Casal Curmi melevitanae Dioecesis, in parochiali ecclesia facta fuerant, cum Salvator Attard eiusdem loci hisce nuptiis oppositionem fecit, ac die 10 Aprilis 1890 in Episcopali curia nihil transeat apposuit. Asserebat enim iam a pluribus mensibus inter se et Mariam Ellul mutuam matrimonii promissionem intercessisse, atque proinde ad proclamatas nuptias ineundas sponsalium impedimentum obstare. Itaque, ipso instante, in curia processus institutus est, ac utriusque partis testibus excussis et omnibus rite peractis absolutus est die 2 Iunii eiusdem anni, sententia a vicario generali lata, cuius haec erat conclusio: « Perpendentes proinde ex praemissis, praecisam obligationem ad effectum coactionis nullatenus oriri dici posse, dicimus et declaramus nullum atque irritum impedimentum a citato obtentum, atque ideo dictam Mariam Ellul omnino esse in libertate, seu quovis cum alio viro matrimonium contrahendi, nisi aliud ei obstiterit canonicum impedimentum. » Cum tamen haec sententia Salvatori Attard minime arrisisset, hinc post aliquod tempus appellatio apud S. C. C. interposita fuit, cui proinde a Melevitana curia testium depositiones aliaque acta transmissa fuerunt. Episcopus de more rogatus, ut coniici poterat, sententiae suae curiae adhaesit omnino, atque, pluribus animadversis, haec addidit: notandum quoque est quod iure veram et formalem promissionem matrimonii sequi solet familiaris laetitia; cui adstant parentes utriusque partis: et in qua parentes sponsae tradere solent annulum sponso; haec omnia in casu defuerunt. Misit etiam declarationem Mariae Ellul seri-

[*Latin ed. p. 84*]

84. In the deposition presented by the plaintiff, it is entirely denied that there was any betrothal, and the aversion of the girl towards the Savior

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is demonstrated. Synopsis of the arguments. DEFENSE OF THE SAVIOR. The lawyer for the Savior, Attard, after having recalled that, according to both civil and canon law, betrothals are considered to be valid from the beginning, states that the betrothal between these two individuals was undoubtedly valid, as it was perfected by a simple agreement of the parties. Therefore, he argues that the agreement of the parties is sufficient, provided that it appears externally in some way, without any particular solemnity or specific wording. However, proceeding to examine the testimonies of witnesses, he believes that he has more evidence to prove that there was a mutual promise of future marriage. He recalls that Georgiana Tabone, mother of Maria Ellul, heard that the Savior was betrothed to Maria; and that Maria herself said that she wanted to flee from her father's house, because she could not bear to spend a day without seeing him. Therefore, the witness concluded that they loved each other and acted as betrothed; from these last words, the lawyer deduces an external manifestation of the mutual promise. He affirms that the same can be gathered from the testimony of Rosaria Bartolo, Maria's aunt, who stated that the Savior Attard frequently visited Maria's house. Furthermore, the father of Maria, if Vincent Bartolo and Clement Attard are to be believed, confessed that his daughter was betrothed, and had entered into a betrothal with the Savior; and it is also said that Maria herself told the witness Antonia Mangion the same thing. However, the plaintiff's lawyer notes that the witnesses presented by the opposing side, while not denying the promise of future marriage, merely spoke of a delay in the wedding. Therefore, from the facts presented, he argues that the existence of a betrothal is proven. For, he says, it is widely asserted by the witnesses that Maria was betrothed to the Savior, which, according to the way of speaking of the inhabitants of the island of Melevitana, implies a mutual promise of marriage. He believes that this promise is not only demonstrated by words, but also by actions, considering the excessive familiarity between Maria...

[*Latin ed. p. 85*]

MELEVITANA 85 and Salvator were to be questioned by witnesses. Therefore, it concludes that the outward demonstration of consent is not based on a simple conjecture, but on positive evidence, from which the obligation arises. And it believes that this is confirmed by the fact that no particular wording is prescribed in the case of betrothals. For it is the same whether the words are formal or virtual, as stated in chapters 21 and 25 concerning betrothals, or whether the promise is made by oneself, or by a messenger, or by a letter, as stated at the end of chapter concerning proceedings. Furthermore, it does not find that the testimony of Vincent Ellul, Mary's father, who completely excludes the betrothal, is an obstacle. For he has the greatest interest in preserving the honor and freedom of his daughter, and since it is established that the testimony of a single witness

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has no force in this case. Thus, it does not consider that the change of mind of Mary, and her desire now to enter into marriage with another, is an obstacle to the validity of the betrothal. For the rule established in chapter 2 concerning betrothals is that for the dissolution of a betrothal, the consent of one or the other is not sufficient, but the consent of both is necessary. It states that it has been established that all things that are dissoluble can be dissolved by the same causes by which they arose, as stated in chapter 1 concerning the rules of law. Finally, the advocate believes that there is another argument to be presented. He recalls that in every judgment, the necessary persons and the principal ones are the judge, the plaintiff, and the defendant. Indeed, he says, these must be examined, and the judgment begins with the testimony of these. Therefore, he points out that since neither Salvator nor Mary have been examined in this case, the judgment is completely incomplete, so that the judge has not been able to ascertain the true facts, nor the disposition of the parties. Therefore, he requests that the judgment of the Melevitana court be declared invalid.

DEFENSE OF THE BRIDE. However, the advocate for Mary Ellul argues that the judgment of the episcopal court should be confirmed, and, setting aside the incidental question regarding the peremptory nature of the appeal, and expounding the intrinsic merits of the case, he strives to demonstrate that there is no impediment to the betrothal in this case. In law, he points out, the laws have always been more inclined towards freedom, according to the well-known saying from the Arian law, which states that in all obligations imposed, the minimum...

[*Latin ed. p. 86*]

86. It must be diligently investigated whether a marriage has taken place, and therefore, the obligation of marriage should never be admitted unless it is demonstrated with the utmost certainty, as is evident from numerous resolutions of the Sacred Congregation and, most recently, from Bellimen, August 20, 1887 (1), concerning the traditional teaching on marriage vows, VI, number 63. For if there is doubt, the accuser must fully prove his claim, and this is all the more to be demanded when proving the existence of marriage, which inflicts the greatest injury on freedom, so that the judge, as affirmed by the Rota in Ventimilien, Sponsal. 9 Feb. 1756, "in any contract where there is the slightest doubt, must declare the absence of marriage, especially when the claim is not based on a written agreement but solely on the testimony of witnesses." Furthermore, he states that the most certain demonstration of such a marriage must cumulatively include a serious and deliberate promise and a corresponding reciprocal promise. However, from the testimonies presented by the opposing party, nothing is concluded regarding the existence of marriage, but rather the contrary is demonstrated. Indeed, if the witnesses not only speak vaguely of hearsay, but are entirely specific and uncontested, and, in fact, lack certain knowl-

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edge, they testify nothing about a true promise and reciprocal promise. In the first place, Rosaria Bartolo speaks only of a certain familiarity and natural kindness, which is also often shown to guests and lodgers. In fact, in her own words, I understand that the cited... is destined for me from heaven, not expressing anything more than a simple inclination, and at most, some desire and willingness, as demonstrated by the cited Dec. VII in Coscius and other decisions of the Sacred Rota, "having shown it with her own words: he did not speak to me about marriage." Furthermore, many things are mentioned that are not conclusive. The second witness, Angela Sammut, a marriage broker, appears to be subject to suspicion, since she is likely to receive a large sum of money (1) This question is addressed in Vol. XX, 370.

[*Latin ed. p. 87*]

He hoped to receive compensation: therefore, as the Bishop observed, such testimonies deserve the weight they merit; on this point, Coscius, Decree 31, no. 2, Rota; before Cerro, Decree 26, no. 17; Falconer, D# spons. to him, before Crispo, Decree 401, no. 9. But even setting aside this exception, the defender notes that the words of benevolence and love attributed to the intermediary are explained within the context, especially by the expression addressed to him as "bridegroom." Indeed, the word "I want" in matters dependent solely on the speaker's will "indicates the beginning of an act, and confers no disposition for the present, but only the act of intending for a future time," Coscius, Book I, no. 3, an interpretation which the Sacred Congregation has consistently maintained in the case of the marriage of Veliterna, June 9, 1855. Using similar arguments, the advocate refutes the testimony of the witnesses Anthony Mangion and Vincent Bartolo, who, while stating that the father intended to marry his daughter to Salvatore Attard, at the same time added, "I want my daughter to be suitable, but not at this time." However, he continues, these testimonies are contradicted by the witness presented by the opposing party, for the first testified that the mother rejected such a marriage, saying: "She did not want to marry her daughter to a sailor," and the second confessed that, when asked by the father, he had replied that it was impossible because Mary did not love Attard. Finally, the fifth witness, namely Clemens Attard, the brother of Salvatore, in addition to general hearsay about the existence of the marriage, adds that he had received a warning from his father not to send the intermediary any longer, because it would be impossible for her to obtain consent for the proposed marriage. This refusal, he observes, was confirmed by the father himself during the interrogation. What Georgia Tabone, questioned in her official capacity, stated was only that there was a desire, and a benevolence, which, she added, expressed the highest degree of a future contract, but which was never brought to fruition. With these observations, the advocate affirms that the witnesses presented by the man

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clearly demonstrate favor towards the woman. And indeed, Carmelus Cinti not only excludes,

[*Latin ed. p. 88*]

88. The defenders argue that the father's indignation stemmed from the feeling that the proposal of marriage had been presented through an intermediary, as if he had been treated with ingratitude. All of this is consistent with the father's own words, in which he stated that he would reject the proposal of marriage because his daughter did not desire it. It appears that the Savior agreed with this rejection, for the witness from Carmelus Mifsud, when questioned third, testified that the young man had been seen with other women, quoting the words of the mother, who said that two or three girls were vying for his attention. The prosecutor adds a noteworthy circumstance: in the diocese of Melevitana, it is customary for betrothals to be considered truly initiated only when there is a clear exchange of consent, which is commonly referred to as the "subharratio." The Bishop testifies to this substantial formality for establishing the existence of betrothal, and canonists confirm this, particularly Schmalzgrueber in *Ius Eccl. univ.*, book IV, number 56, where it states: "If it is the custom of the place that the exchange of consent signifies betrothal, then it will be considered to have been performed according to the custom of the place." Furthermore, Reiffenstuel in *Lib. IV, tit. I, num. 57* teaches this, and the Holy Congregation for Matrimonial Affairs confirmed it in Rieti on March 7, 1885. Moreover, the judgment of the Melevitana court should be upheld, not only because of what the Bishop presented in his further information, but also because it is in conformity with other resolutions issued in the same diocese concerning the Sacred Congregation of the Council. Among others, based on the facts presented and the principles of law, the case of the betrothal of April 18, 1863, in Melevitana is cited, where, given the more serious circumstances, the question arose: Should the judgment of the episcopal court be upheld or overturned in this case? The response was that the judgment should be upheld. With this clarification, the purpose was to resolve the doubt: Should the judgment of the Melevitana court of June 2, 1890, be upheld or overturned in this case?

RESOLUTION. The Sacred Congregation of the Council, having considered the matter on May 30, 1891, decided to respond: The judgment should be upheld, and furthermore.

[*Latin ed. p. 89*]

FROM WHICH ONE MAY GATHER. I. It pertains to the accuser to prove his claim; and even if the marriage has truly occurred, unless it is proven with apodictic arguments, the accused is absolved. II. Indeed, no one ought to be condemned based solely on presumption; this principle has particular force in matters of marriage, where judgment must be rendered in favor

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of non-existence, or of freedom, unless the contrary is fully proven. III. In a case of this nature, if the fullest proof is lacking, no one should be considered to be lacking (1). MUTILANA PENSION. On April 11, 189, Session 24, Chapter 18, concerning Reforms. SUMMARY OF THE FACTS. Following the death of the parish rector of the church of S. Reparata, located in the Terra dei Sole* district of the diocese of Mutilana, a competition was announced according to custom. And when, on the appointed day of November 24, 1887, four priests attended the examination, the chancellor notified them beforehand that the intention of the Ordinary was to impose a pension of 400 livres annually upon the one invested with this benefice; and he requested that each of them subscribe to this will of the Bishop; which they did, although some of the candidates made observations, and raised some objections, if we may hear the actual rector of the church, who is the plaintiff in this case. Among the candidates, Joseph Neri was found to be the most worthy, and by a decree of the Bishop dated November 30, 1887, he was appointed to the administration of the vacant parish. And shortly thereafter, and precisely on January 5, 1888, as is evident from a document presented by the Bishop, he himself signed a declaration: that he would pay an annual pension of 400 livres to the persons designated by the Curia. (1) See Vol. XIX, 189.

[*Latin ed. p. 90*]

90. MUTILANA. Then, on January 26, 1888, as the very actor himself expressed it, he was invested with the parish. However, he did not enter into the spiritual and temporal possession of the benefice until October 8, 1888, only after having obtained the royal decree shortly before. Soon after, and precisely on October 15, the Bishop issued a decree in which he established the amount of the pension to be paid and indicated the persons to whom it was to be paid. The parish priest, Neri, duly paid these installments of the pension for almost two years, until, first by a petition to the Bishop, and then on November 29, 1889, by a suppliant letter to the Sacred Congregation of the Council, he requested to be relieved from the pension of 400 scudi, in order to be able to attend to the urgent restoration.

SYNOPTIC DISCUSSION. DEFENSE OF THE PARISH PRIEST. The defender first warned, citing the authority of Ferraris, *De Pensionibus*, n. 15; Fagnani, *i. 2, tit. 14, sec. 5, De pen.*, n. 22; the Sacred Congregation of the Council, in the *Salernitana Pensionis* case, of April 7, 1883, and others, that pensions, speaking properly, can only be imposed by the Holy Father concerning regular benefices, because benefices, according to the explicit text of the law, must be conferred without diminution. This must be stated more strictly concerning parishes, which, according to the edictal law of November 11, 1691, promulgated by the express mandate of Innocent XII, cannot be burdened with pensions by the Bishops; and shortly thereafter, the Holy Father Benedict XIII confirmed this in the constitution *Quanta

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Pastoribus*. However, it is certainly not lacking in power for the Bishops to impose pensions, but it must be done only in a legitimate manner, for a just cause, and with a moderate measure. A legitimate manner is when the Bishop assigns the pension not to himself, nor to an indefinite person, as is stated by Pax, Jordanus, *t. 2, lib. 9, tit. 1, n. 502*; Ferraris, *I. c., n. 22*, and others, because, according to the constitution *Hisce Non Suficiens* of Pope Pius V, this would be a hidden form of simony; but it is required that the cleric for whom the pen-

[*Latin ed. p. 91*]

MUTILANA 91 is reserved, and by the very act, it is named; which, however, the Bishop of Mutilana did not do. Let it at least be said that the pension should be maintained by reason of the written obligation; for in the first place, the document states that the signatory did not freely and spontaneously, but under coercion and with reverential fear of the Bishop, affix his signature, and therefore this act should be considered invalid and null, according to the meaning of chapter *De r'enunciat*. Moreover, since the order and the completed action are intended to circumvent the prohibition of the law concerning pensions, even if the contract were valid by reason of freedom, it would nevertheless not be declared valid, because no one can obligate himself against the law, according to chapter *Significavit De cens. exact, et procur.*; and because whatever is done contrary to the prescription of the law, whether the words are offended or the spirit of the law, is not valid by its own right, according to the meaning of chapter *Extirpandae De praeb, et dignit.* Furthermore, the cause of the pension itself is lacking; for the parishes do not need assistance to which the pension is assigned. In the first place, the parish of Castrocaro is subject to a tax, commonly called *di concorso*, to which only those with a richer income are subject. And although the actual pastor is burdened with a pension of 480 *libellae* to be paid to his predecessor, nevertheless, a reduction of the burdens of the legatees has been granted to him for this purpose. The same must be said of the parish of Dovadola, which receives 359 *libellae* annually from the Mutilana hospital, and is enriched by 3,000 *libellae* in addition to an uncertain amount, if one is to believe the patron. Therefore, even admitting the poverty of the two other churches, it must be concluded that, at the very least, the pension lacks a just cause. Finally, according to the patron, the pension also exceeds a just measure. For the income of the parish, which the deceased pastor Nardini claimed to be 5849 *libellae*, is now said to be only 4000 *libellae*, considering the actual economic difficulties and the agricultural crisis. But from this income, 1078 *libellae* must be deducted for various property taxes, buildings, movable property, and

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family expenses, and 30 *libellae* for a guarantee.

[*Latin ed. p. 92*]

92 [souls] perished in fires, 247 due to the tax of the dead hand, 146 because of the customary offering to the saints. Furthermore, 1500 livres are required annually for the expenses of the cult and the church, a sum which will undoubtedly increase in the future, because the priest of the place, who until now celebrated Mass on feast days, is now hindered by infirmity, and unless the alms for the Masses are increased, another cannot be found who will satisfy the needs of this people, for a second Mass is absolutely necessary in that parish. Therefore, after all these deductions, the priest can only have 1020 livres remaining, which, as everyone easily understands, is so little that it is far from being able to be divided and spent in favor of others, so that it barely seems sufficient for the honest sustenance of the priest, especially if one considers that the parish of St. Reparata has many poor people. To this is added that the roof of the church and the bell tower urgently need restoration, and a sum of 5000 livres or more is required for this purpose. The priest has indeed requested assistance from the royal chamber of spoils; but he received the reply that, due to a lack of funds, his request could not be granted, even though the need for restoration was known; but rather, he was given permission to incur a debt, to be repaid from the revenues of the parish, with the usual conditions. The matter remains in suspense, but if, considering the necessity of the work, the civil authority enacts a law regarding loans, the priest would be in a dilemma, either to reveal a secret pension that had been promised to him, which would certainly not please the Curia, or to offer no plausible reason for the impossibility of satisfying the obligations of the loan, which would not be proper for him. For this reason, the speaker believes that the disputed pension cannot be sustained.

DEFENSE OF THE CURIA. But, on the other hand, it is certain that the Ordinary can, for a legitimate reason, require those who hold benefices to contribute to some moderate pensions, if the benefice is capable of supporting them, a decision which has not been disapproved by the Sacred Congregation.

[*Latin ed. p. 93*]

MUTILANA 9$ signed once. Reiffenstuel should be heard regarding Ut. Ut ecclesiastical benefice, without diminution, confirmed, no. 88: "Although, regularly speaking, the Bishop, or another inferior papal official, cannot confer a benefice with the reservation of a pension to be paid to someone; nevertheless, in a special case, and for a just and reasonable cause, the Bishop can also impose or establish a pension, at least for the lifetime of the beneficiary, and with his consent, so that the pension may be extinguished. - This conclusion, regarding the former part,

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is certain, and is evident from the rubric and text of the present title... The second part of this conclusion is held by the Glossa in c. Audivimus v. Pensionem De coitus, deteg., Innocentius c. De cetero n. 7, Abbas ib. n. 2 De transad. Garcias De benef. p. 1 n. 295*, Gonzalez ad reg. 8 Cancel, hl. 5 % 5 n. 27, citing the Rotam, etc., and frequently Fagnanus in c. Nisi essent De praeb, citing several others, and asserting that this is the most accepted opinion. > And indeed, in chapter Nisi essent De praeberi, a pension of 40 pounds was ordered for a certain priorate dignity "for the sake of peace and utility," and was approved, "with this condition applied, that the obligation of 40 pounds should not burden the priorate dignity itself, but the person of the prior: so that it might not seem that any division had been made regarding the revenues of the priorate; so that, when the prior died, his successor would in no way be obligated to pay the 40 pounds." With this distinction applied, the difficulty which arises from the cited legal title, Ut ecclesiastical benefices are conferred without diminution, is completely resolved, the rights are reconciled, and it is also explained why, in the case of Salerno in the year 1883, it was declared that the pension could not be sustained. Indeed, in that case, the Archbishop conferred the benefice "with this condition added, that each year, from the revenues of the said parish, the sum of 30 ducats should be assigned perpetually by us and our successors, in favor of some poor parochial church." This decree clearly affected the benefice itself, which the Sacred Congregation never approved. Nor does the edict of the Prodatarius under Innocent XII present an obstacle.

[*Latin ed. p. 94*]

94. The decree of the Holy Council, or the canons, forbid pensions, either those that are excessive or those that are granted without just cause, or those that affect the benefice, as Reiff notes (I, c. n. 103). However, in the present case, the pension does not affect the benefice itself, but rather the person who holds the benefice. Therefore, the first and most important objection raised by the plaintiff's advocate against the validity of the pension seems to lose its weight, and it does not appear that the Bishop has exceeded the limits of his authority when he ordered all the candidates, and then the elected candidate, to contribute to the pension. For if it is permissible for Ordinaries to impose a pension, even for life, on the beneficiary for a just and reasonable cause, then it is also permissible for them to require the candidates and the elected candidate to promise to pay the pension. And thus, even those matters concerning the loss of freedom or the reverential fear of the parish priest, which seem to be raised in this case, are not beyond reproach, provided that there has been no transgression in the amount or the cause assigned for the pension. Indeed, if the matter concerns the cause, the plaintiff himself admits that two of the pensioners are in dire need of assistance, and that it is only the case of the parish priest of Castrocaro

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and the chaplain of Dovadola that is not true. But, as the Bishop rightly notes, the first problem is that the judge himself cannot judge this matter. Furthermore, it seems false that the amount of money is as great as is asserted for the chaplain of the parish of Dovadola. Indeed, in a letter to the Ordinary, he asserts that his annual salary is only 418 florins, which must be paid after deducting taxes, movable property, and inheritance taxes, amounting to 74 florins, and after providing for alms for 85 masses, and for expenses for the feasts of the Rosary and the Circumcision of the Lord, after which he must take from the remainder not only what is necessary for his living, but also for his lodging; therefore, the pension of 50 florins assigned to him is so excessive that it seems unjust, and barely sufficient. As for the parish priest of Castrocaro, he asserts that the conditions of his benefice are so strict that, as he himself says, his predecessors must have suffered much in order to maintain the honor of the Church and themselves, as is fitting, because the parish is among the most...

[*Latin ed. p. 95*]

MUTILANA. 95 souls. The diocese of this place. Thus, after the retired pastor, I received the parish, and I also undertook the obligation of paying 480 livres, a debt owed by my predecessor, who was removed from the parish for the good of souls. I did this because the Bishop promised to relieve me of this burden as soon as possible. Furthermore, it is proven, and indeed admitted, that the pension could be extended to a third, or even to half, of the parish revenues. However, even admitting that the income of the parish benefits does not exceed 4000 livres, as the plaintiff contends, it is still easily understood that a pension of 400 livres does not exceed a just limit. Moreover, the Bishop states that the revenues amount to 5489 livres; thus, after deducting the annual expenses, there remain 3264 livres for the pastor. It is objected that the roof of the church and the bell tower are in urgent need of repair, and that considerable expenses, estimated at 5000 livres by the master mason, must be incurred. To this, the Bishop replies: if a loan were truly necessary for the restoration of the bell tower, the revenues of the parish could easily cover it, and the small pension granted to the pastor could be suspended without causing any hardship. Finally, something must be said about the manner in which the pension is granted, for it is also objected that this constitutes a fault, inasmuch as in the letters of appointment, a pension was granted to a person already named. However, it is clear that no serious irregularity arises from this, since it is forbidden to reserve pensions either for oneself or for a person to be named in the future, because then there is either the danger of secret simony, especially if the granting authority reserves the pension for himself, or, if not, there is a lack of legitimate justification, for when it is a question of a person to be named in the future and unknown to the granting authority, it cannot be understood by what titles or merits that person deserves the pension. This

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is well observed by Pax Jordanus in *Elucubr. De re benef*, vol. 2, book 9, title 1, no. 489, where he says: "From the Constitution of Pius V..."

[*Latin ed. p. 96*]

The faculty of retaining pensions has not been entirely abolished for Bishops, but only under the aforementioned conditions, when it is reserved for a person to be named; because then a just cause cannot arise, which is said to be necessary above and below, and also because a way is opened to fraud and simony. Garzia, Gonzalez, and the Rota, cited by the same Lordano, are of the same opinion. However, none of these evils can occur when the name of the person is withheld for a just reason in the bulls or letters of collation, but is immediately expressed in a separate document, as happened in the case at hand. Indeed, in this case, the reservation for a person to be named is merely apparent and fictitious, since, if one considers the substance of the matter, the pension is truly inscribed only for a determined and named person. Since these things are so, this objection also seems to be unfounded. Furthermore, since the parish priest Neri has subscribed to an agreement, and neither fear nor coercion is demonstrated, but rather, since he signed the single-page obligation several days after receiving the nomination from the Bishop, it seems that, according to the established principles of law, namely, titles 21 of the 6th book and 75 ff. of the Corpus Juris, and other similar texts, the sum of 400 livres can be added according to the force of the agreement and the accepted obligation. With these and other things noted, the purpose is to resolve the doubt: Whether the pension is maintained in this case. RESOLUTION. The Holy Congregation, having knowledge of the matter on April 11, 1891, responded: It is not maintained (1). (1) From the question presented in Volume XXI, 550 and elsewhere, it appears that a Bishop can impose pensions on benefices, even on curates, provided that it is done in a legitimate manner, for a just cause, and with a moderate measure. In the present case, perhaps the Emiss Judges considered that one of these three requirements was lacking.

[*Latin ed. p. 97*]

97 GALTELLINOREN. CONCERNING PAROCHIAL RIGHTS. Session 24, chapter 18, On Reform. In the year 1779, the Supreme Pontiff Pius VI, by a Constitution beginning with the words "Eam inter caeteras,"* restored the diocese of Galtellinoren in Sardinia, and entrusted the habitual and actual care of souls of the entire city of Norense to the chapter of the Cathedral Church. Therefore, he also decreed that in the future, no one should be admitted among the canons without a prior examination, as is required in the provision of parishes before the Ordinary, and without the dispatch of bulls. Furthermore, the chapter, together with the canons and beneficiaries, seems to have obtained the exclusive right to perform the sacred functions, both those instituted and those subsequently instituted, not only in the

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Cathedral, but also in other churches, which are improperly called "daughter" churches. Such functions were usually performed either by the entire chapter, or by one of the canons with the assistance of the beneficiaries, whom they call "domarii,"* or by the beneficiaries alone. In the first case, the fruits derived therefrom were divided into three parts, of which one part was ceded to the beneficiaries, while the other two benefited only the canons, even excluding the sick. However, funeral emoluments were excepted, and each, whether canon or beneficiary, received a proportionate portion thereof. If, however, the functions were performed by either one of the canons with the ministry of the beneficiaries, or by the beneficiaries alone, then half of the proceeds derived therefrom were paid to the chapter, and the remaining half was assigned to the beneficiaries. In the year 1834, at the request of the Reverend Father John Bua, Archbishop of Arborea and apostolic administrator of Galtellinorum, Pope Gregory XVI, by a constitution beginning with the words "Ad supremae,"* granted the care of the principal parish of Norense to one canon as pastor. For this purpose, the canonry under the title of Saint Rose of Viterbo was then ESTABLISHED. Acts, Volume XXIV, page CGLXXVIII. 7

[*Latin ed. p. 98*]

98. Galtellinorensis, vacantem in canonicatum curatum, cum quibusdam clausulis et conditionibus, erexit; « archipresbytero et canonicis animarum curae exercitio perpetuo exoneratio. » Huiusmodi litterarum apostolicarum executio ipsi Archiepiscopo administratori commissa fuit; ita tamen ut pro suo arbitrio et conscientia libere et licite disponere valeret. Verum hodiernus Antistes galtellinorensis refert, quod antequam prodiret praefata Gregoriana constitutio, inter Praesulem Bua et ecclesiae cathedralis capitulum, quoddam compromissum cum sequentibus conditionibus ab utraque parte accepto habitis, intercesserint. 1. ut media pars fructuum novi Beneficii tunc primum conferendi canonico Curato cederet in bonum Capituli, et altera in favorem Canonici Curati: 2. ut Canonicus curatus sustineret omnia onera parochialia; 3. ut ipse Canonicus Curatus ius acquireret in mediam illam partem fructuum, quam Capitulum percipiebat ex functionibus peractis a solis Beneficiariis, quin tamen posset Curatus qua Curatus iisdem functionibus interesse; 4. ut idem Canonicus Curatus ius etiam haberet percipiendi fructus stolae, ut dicitur, capitularis, una cum ceteris Canonicis, partibus aequalibus; 5. ut tandem Capitulum retineret curam habitualem et ius administrandi Baptismi sacramentum independenter a Curato, onere manente penes Canonicos, audiendi, diurno tempore, fidelium confessiones, sive in Ecclesia, sive domi causa infirmitatis. Praeter haec, ad maiorem rei intelligentiam, perpensum fuit Archiepiscopum executorem Gregorianae constitutionis in suo executoriali decreto diei 15 Ianuarii 1836, haec inter cetera art. IV: statuisse, « stolae fructus, seu adventitia emolumenta obvenientia ex

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tumulatione ac suffragiis defunctorum, missarum, festorum, aliorumque officiorum in ipsa cathedrali ecclesia vel ipsis filialibus celebratione, quibus capitulum minime intersit, pro integra medietate canonicus curatus percipiat, uti pro medietate solebat capitulum, in cuius ius quoad haec emolumenta succedit; altera beneficiariis praesentibus medietate relicta. Quae vero emolumenta pro-

[*Latin ed. p. 99*]

"Furthermore, in the future, funds will be obtained from pious and charitable offerings of the faithful, or from the administration of sacraments, the blessing of mothers after childbirth, and similar occasions, or even from the sacred functions of the chapel of the Most Holy Sacrament, which from now on we dedicate especially to parochial activities, for the purpose of acquiring a full canonical curate, who will divide half of his emoluments with his assisting priests." And in article VI: "Regarding other emoluments, whether they come from offerings made to the entire chapter, or from festivals, both in the cathedral church and in the affiliated churches, established by the pious will of the faithful, or to be established in the future, with interest accruing to the chapter, or for functions celebrated in the name of a particular canon, the canon curate, for the time being, shall participate as each canon does."

Furthermore, articles VIII and IX stipulated: "The canon curates are therefore obligated to celebrate Mass for the people on each of the prescribed feast days, to teach Christian doctrine to boys in the afternoons at fixed hours, to administer catechesis, to explain the Gospel to the people, to administer the sacraments, to provide the last sacraments to those who are dying, to grant ecclesiastical burial to the bodies of the deceased, and to perform the offices for the deceased, and to fulfill all other parochial duties, as any pastor of souls is obligated to do. Therefore, with these aforementioned apostolic letters restoring the archpresbyterate, we hereby exempt the archpresbyter and the entire chapter from the actual care of souls, from now on and in the future; however, the obligation to hear the confessions of the faithful of both sexes, both within and outside the cathedral church, as often as either of them is called to perform this most excellent act of charity, remains in full force."

After declaring that canons who hear the confessions of the faithful, either in the cathedral or in the affiliated churches, and who are present as a choir, shall receive no reduction in their distributions, article X continues: "The priests who are proctors or assistants shall be three benefices, commonly called 'domiarii' in the vernacular."

[*Latin ed. p. 100*]

100 GALTELLINOREN. Concerning the exercise of the care of souls by a canon, as by a curate, it is entirely dependent on the archpriest, and must

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be subject to him, and in the same parochial ministry, must diligently provide assistance. Finally, article XII stated: "Having been removed from the archpriest, as mentioned above in article X, the care of the souls of this city has, up to this point, been entrusted to him by the erection of the bishopric through the aforementioned apostolic letters of July 11, 1779, as a primary duty; therefore, all other rights, duties, honors, privileges, and prerogatives which belonged to him, either by law or by custom, shall henceforth pertain to the same archpriest, and by this apostolic authority, we decree and declare."

The situation was such that, in the year 1880, the current parish priest of the cathedral church of Galtellinoren, before the Sacred Congregation of Councils, strongly protested against the manner in which the Chapter was acting, as if it presumed to invade parochial rights, and in order to "remove all doubt," he requested a resolution of certain questions, about which we shall speak later. These questions were referred to the consultors in order to draw up an opinion to be communicated to the parties. However, since this had no effect, it was proposed that the cause be determined in the plenary assemblies of the Fathers.

Synopsis of the Discussion. The Chapter of Galtellinoren presents its arguments in five points. Firstly, they contend that the Chapter has the right to administer Baptism and to keep the baptismal records, noting that this derives from the habitual care, by virtue of which the current parish priest must be considered a servant or employee of the Chapter, who must be content with the rights and emoluments already assigned to him from its inception, according to *Gabriel, consil. 190, lib. 2, n. 7 and 8; De Luca, disc. 22, n. 8, De parochis; Rota in Romana, funer. 4 December 1620, cor. Coccino.* The habitual care, however, belongs to the Norensis.

RIGHTS OF THE CHAPTER.

[*Latin ed. p. 101*]

GALTELLINOREN. They argue that the Cathedral chapter resides [in the parish], first from the very words of the apostolic executor himself, and second from the condition stipulated by the chapter in the erection of the parish, by which it sent notice of its actual care. Furthermore, they cite another declaration of the same chapter, made shortly before the execution of the apostolic constitution, and the very tenor of the executive decree itself, which grants that the canons, receiving sacramental confessions or assisting the curate in the city, should be considered as present in the choir. They do not claim that this proves that habitual care was explicitly granted, since the apostolic administrator expressly declared that he had kept the condition imposed by the chapter in view during the execution of the aforementioned constitution and had observed it religiously. There-

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fore, they argue, it follows that the canons, without prior permission of the curate, administered the sacrament of Baptism, and that a place for keeping records, in which the minister immediately wrote down the names of those baptized, was designated from the very beginning. They claim that this is confirmed by testimony presented to the episcopal court. However, based on these facts, they maintain that nothing is more in conformity with the law than that the chapter should be held in a quasi-possession of the right, which arose from the beginning and was observed by the apostolic administrator himself. They cite Lotter, *De re benef.* I, n. 125, and Cardinal De Luca, *De iurep.* disc. 60, n. 9, and *de benef.* disc. 27, n. 18, who teach that the best interpreter of the law is the observance of it, and that it gains greater authority if it is close to and contemporaneous with the law itself; and Pitonius, *Disc. Eccl.* disc. 139, n. 44, §. They also cite the Holy Rota in Firmana, jurisdiction 10 May 1700, n. 37. They point out that, not only in the interpretative line, but also in the prescriptive one, the observance suggests that the canons should be maintained in a quasi-possession of the right, since it has been established in both civil and canon law that a private or public right, in any cause or concerning any person, is extinguished by forty years of continuous silence, I. 4 of the Code on prescription, or 30 or 40 years, Chapter 6 on prescription, etc. This doctrine is consistent with the opinion of the Holy Rota.

[*Latin ed. p. 102*]

102. GALTELLINO. The hearing, and also the documents of the Sacred Congregation of Councils, dated January 30, 1830, which were presented in the parish of Marsorum, in which it was stipulated that the chapter retained the right to baptize children and to hold the keys of the baptistery and the reserved oils, notwithstanding the decrees of the visitation, "according to custom." Therefore, the Archbishop of Arborensis, acting as an apostolic delegate in the diocese of Galtellinorensis in the year 1879, ordered that the canonical pastor should not, under any circumstances, remove the book of baptisms, together with the key of the baptistery, from the designated place, until the Holy See had otherwise decreed. It is argued that this decree, having been approved by the Holy See, acquired full force and authority.

Regarding the second point of the argument, they attempt to demonstrate that the chapter has the right to celebrate chapter functions and to entrust one or both of the canons, with the assistance of the beneficiaries, with the celebration of other functions, and to receive the fruits derived therefrom. They point out that, in matters not pertaining to the care of souls and not touching upon parochial duties, the chapter has preserved all its rights after the Gregorian Constitution, as can be deduced from articles IX and XII of the executive decree.

Indeed, they argue that if, through the institution of the canonical pastor,

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the chapter was only notified of the actual care and of those functions which are strictly parochial, it cannot be denied that the chapter still has the right to perform other functions, either by itself or through another. This, they argue, is clearly recognized in the deliberation of the chapter of August 22, 1829, where it is stated that the functions reserved to the chapter are those of the sacred offices celebrated on feast days, or to be celebrated, or those that are adventitious in the Cathedral Church, because they are not parochial but purely ecclesiastical. Therefore, if, except for purely parochial functions, all other functions belong to the chapter, the petitioners believe that it necessarily follows that the fruits and emoluments derived therefrom belong to each member of the chapter and must be divided among them. This, they emphasize, is explicitly stated in the aforementioned deliberation of the chapter of August 22, 1829, to which they refer the apostolic executor.

[*Latin ed. p. 103*]

GALTELLINO, REN. 103, maintained its position, asserting that it had thoroughly examined the opinion of the Executor on this matter. The patrons of the church argued that the chapter had the right to administer the affairs of the church, including the performance of functions, which the canons of the chapter carry out, and also the right to assign to one or another of the canons, with the assistance of beneficed clergy, the celebration of other functions, such as festive Masses, or Masses for the dead, novenas or triduums, and processions, and to receive the fruits derived from such functions. Indeed, they asserted that Article VI of the aforementioned decree clearly confirms this, and that there is no room for doubt about it. This article states: "Furthermore, all other emoluments, whether derived from offerings made to the entire chapter, or from festivals held in the cathedral church, or in the affiliated churches, by the pious contributions of the faithful, established or to be established, with the intention that the chapter, or some canon of the chapter, should celebrate Masses in their name, the canon in charge at the time, as each canon is a participant, shall receive a share." Moreover, they argued that it is not clear why the chapter would have wanted to conceal all of this if it did not have any right to perform these functions and to receive the emoluments derived from them. In addition, Pitonius adds, in his Disputationes, 9, no. 20: "It seemed clear to me that these emoluments and revenues pertain to the chapter, and not to the prelate, because of the care of souls; since these are ecclesiastical functions, and not merely parochial ones, the parish priest has no right to them." However, they maintain that although the Gregorian Constitution stipulates that a portion of the fruits and emoluments derived from such functions, which were formerly due to the chapter, should be given to the canon in charge, this does not necessarily imply that the right to perform these functions has been altered, citing the legal principles "quod voluit

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expressit, quod noluit non expressit" and "expressa nocent, non expressa non nocent." Thirdly, they address another point of contention.

[*Latin ed. p. 104*]

104. Concerning those who assist at the funeral rites of the deceased, and the precedence and right to perform the ritual absolutions, it is always understood that this pertains to the chapter. This is demonstrated in the case of the funerals of those outside the parish, either because in such cases, the cathedral, and not the parish, is considered, or because the canonical pastor cannot claim any jurisdiction over them. But even when dealing with parishioners, they argue that precedence belongs to the chapter, based on the disposition of the executive decree, which reserves all other rights and honors to the archpriest and the chapter. When they say that this right was anciently held by the chapter, and was not granted to the pastor in the Gregorian Constitution, it must be said that nothing has changed in this matter. Indeed, this practice clearly favors the chapter, and it began during the lifetime and with the consent of Archbishop Bua, to whom the task of carrying out and explaining the Apostolic Letters had been entrusted. The reason for this, according to the chapter, is that since the canons derive benefits from this, it would not be right to burden the pastor with more obligations than the other canons. Even if it were granted that the pastor should perform the ritual absolutions, they believe that precedence should always be reserved to the chapter. Vecchiotti, vol. n., page 151. To all of this, the Bishop adds that, based on certain considerations, he believes that the chapter reserved this right to itself when establishing the parish, and furthermore, he adds that the canons have, for a period of 56 years, performed the duties at funerals, both of parishioners and of those from outside the parish, in turn, in the presence of the executor of the Gregorian Constitution, and that neither the former nor the current pastor, who succeeded him from the year 1868, has objected to anything. Indeed, the proponents argue that, if any right is lost through silence for forty years (cf. *Codex de praescriptionibus*, Cap. 6, *Decretum*), the chapter's right of precedence and the performance of absolutions at funerals must be maintained, since it has been exercised without interruption for over a hundred years, that is, since the year 1779. Therefore, they believe that the decision of the Sacred Congregation in the case of Marso should be upheld with all due emphasis.

[*Latin ed. p. 105*]

GALTELLINOREN. On May 30, 1830, in a document consisting of 105 pages, concerning a doubtful matter: whether the canon of the weekly blessing of the bodies of the parishioners was reserved, the response was: Affirmative, according to an ancient custom. After these words, attempts were made to add resolutions of the Sacred Congregation of Councils in Subiaco, dated September 18, 1824, either because the canons

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of the cathedral of Subiaco were not subject to the reasons presented in the case, or because such resolutions lacked any efficacy and validity. In Quarten, they recall the dependence to which the beneficed clergy are bound by the parish priest, and which restricts them, according to the Apostolic Constitution and the executive decree, to those matters pertaining to the care of souls and the parochial ministry. Therefore, they argue, the current parish priest would want them to be subject to him in all things, so that perhaps, gradually and without awareness, he might claim for himself those ecclesiastical functions which the beneficed clergy are accustomed to perform independently of him in the filial churches. However, they believe that this is clearly evident from the agreement between the Apostolic Administrator and the Chapter, as well as from other documents concerning sacred functions, which were mentioned above. Finally, they attempt to prove that the same beneficed clergy are not obliged to assist the parish priest in the preaching of the Gospel and in catechetical instruction, citing the Council of Trent, Session XXIV, chapter VII, De reform, where these obligations are imposed upon the parish priests as something to be carried out by themselves; which, with regard to the parish priest of Galtellinoren, was expressly affirmed by Gregory XVI. Therefore, the petitioners argue that the parish priest cannot, in any way, transfer this obligation to the beneficed clergy, unless the common and particular law of the diocese is violated. In confirmation of this, they cite the practice that has been observed there up to now, and they claim that this practice has been proven by all witnesses, without any exceptions. Therefore, they quote the words of Gabriel Cucca, aged 67, and of the priest Ghironi, a beneficed cantor of the cathedral, aged 73 years, who, moreover...

[*Latin ed. p. 106*]

106 GALTELLINO. It has been customary for the parish canon to appoint a substitute, a parish priest, whenever he himself is, for a legitimate reason, prevented from fulfilling his duties; and to pay this substitute a sum of money. The Bishop, who has governed the parish of Galtellino since 1867, confirms this practice, and furthermore states that it seems absurd to impose greater obligations on beneficiaries who receive a very small income than on the parish priest, who is in a far better position. The Bishop and reliable witnesses affirm that if anyone among the beneficiaries has ever fulfilled the duty of explaining the Gospel or catechizing, it has been done freely and not under any obligation. The testimony of the Ordinary, who is considered to be best informed about the state of his church, has been given on several occasions to the Most Holy Audience, especially in Tisianen, on January 16, 1711, in decree 37, number 6, paragraph 13; and also in the decree *Cum Illud* of Pope Benedict XIV.

RIGHTS OF THE CANONICAL PARISH PRIEST. On the other hand, the

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Canon of the Parish argues primarily that the right to administer baptism and to keep the baptismal records belongs to his position. The reason for this is that he is, in fact, the true and sole parish priest of the greater church of Norensis. This is deduced primarily from the Apostolic Letters of Pope Gregory XVI, which stipulate that the new parish priest must fulfill all that is proper to a true parish priest, namely, that he must give catechesis, explain the Gospel to the people, teach Christian doctrine, celebrate Mass for the people, grant ecclesiastical burial, perform the offices for the dead, and, in short, fulfill all other parochial duties. This was the intention of the Apostolic administrator of Norensis in the establishment of the parochial position, and for this reason, he requested the Supreme Pontiff to erect the canonry vacant under the title of Saint Rose into a benefice for a priest who, together with two or even more assisting priests dependent on him, would exercise the entire care of the parish. In the execution of the Apostolic Letters, the Canon of the Parish is assigned the fruits of the vestments, or the incidental income derived from burials and prayers for the dead.

[*Latin ed. p. 107*]

GALTELLINO. 107. Concerning the celebration of feasts and other offices at Sarum. He attributed to them the administration of the sacraments, and also the power to bless and to receive offerings. Furthermore, he imposed upon them the duty of celebrating Mass for the people, of teaching Christian doctrine to children, of explaining the Gospel to the people, of administering the sacraments, of providing assistance to those engaged in the last offices of the Holy Religion, of granting ecclesiastical burial to the bodies of the deceased, and finally, of fulfilling all other parochial duties, which every pastor of souls is bound to perform. Indeed, this was the very intention of the Chapter of Nor, whose consent the apostolic administrator again requested, before delivering the apostolic letters for execution. From these expositions concerning the nature and quality of the Canon of the Parish of Nor, it is clear that the right to administer baptism belongs to him, as it does to any pastor of souls, and that he is also responsible for keeping the baptismal records. He asserts that it is clear that he has the right to administer baptism, first from the decree of Eugene IV promulgated in the Council of Florence, in which it is prescribed that the children of the parishioners must be baptized by their own parish priest; secondly, from the disposition of the Council of Trent, which in Session 23, Chapter 1, De Ref., clearly teaches that the right to administer the sacraments belongs to pastors of souls, and urges them to remember the divine precepts and, mindful of the welfare of the flock, to feed and govern it with judgment and truth; and finally, from the common opinion of theologians, among whom he cites Ferraris, *Verb. Parochi*, n. 22; and Barbosa, *De Officiis et Potestatibus Parochi*, p. 2, c. 18, n. 1. As for the fact that he is responsible for keeping the baptismal records, this is evident from what Barbosa states

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in the aforementioned passage, part 1, chapter 7, n. 1, namely that parish priests are required to have four books, or registers, in which they should record first, all those who are baptized in their church, with the names of the parents, if they are born of a lawful marriage, and the names of the godparents who received them into baptism. Moreover, he adds that it is the teaching of the Holy See and of the regulations, as reported by Barbosa in the aforementioned passage, n. 19, 20, that the baptismal records are not to be kept by anyone other than the parish priest.

[*Latin ed. p. 108*]

108. GALTELLINO. But these registers are to be kept solely by the parish priests: such books are not to be taken from the parish by the Bishop in the matter of parish affairs, but are to be kept by them. This common arrangement has not been infringed upon by the Gregorian Constitution, nor by its executor, but rather has been confirmed by it. For, by the Gregorian Constitution, the entire care was entrusted to one presbyter, namely, the canonical curate. However, the Apostolic executor prescribed that the canonical parish priest should be held responsible for performing the parochial duties, just as any pastor of souls. And can any special agreement stand against this? Since such an agreement, or rather, the consent of the Chapter, as mentioned previously, was nullified by the executive decree, which the Chapter accepted, both in itself and through the president of the Chapter, who, after the reading of the decree, responded in the name of the Chapter: that he had found the execution to be in accordance with their wishes. Furthermore, in the executive decree, there is no mention of any asserted faculty granted to the canons to baptize, or to keep the baptismal registers. This is confirmed by the Bishop of Noren himself, who, during a visitation, when he saw a lack of signatures in the baptismal register, did not admonish the Chapter, but rather the canonical parish priest, instructing him to take all necessary care regarding this matter. Finally, he argues from the constant practice and observance, both in the diocese of Noren and in other dioceses of the island, and especially in the dioceses of Uxellense and Algherense, which he endeavors to demonstrate with certain testimonies. After these points, relying on the Apostolic letters and the executive decree, as well as the constant practice and observance of other dioceses of the island, he denies that the care belongs to the Chapter. However, admitting this hypothesis only to a limited extent, and relying on the authority of Barbosa, loc. cit., nos. 50 and 51, he argues that the right to administer baptism and to keep the baptismal registers does not belong to the Chapter, because it does not have the power of execution. And this is to be said even in the hypothesis that the canonical parish priest is to be considered a vicar

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of the Chapter. Vicar.

[*Latin ed. p. 109*]

GALTELLINO REN. 109, indeed, does not receive the title from the Rector, but from the Bishop himself, and it is said to be his duty and responsibility to care for souls and to perform liturgical duties. Ancy. cons. 404, n. 11. Finally, the patron observes that the custom of the Chapter being invoked is unjustly disregarded because of a decree that is invalid by Apostolic letters. Since this decree not only condemns existing customs, but also prevents new ones from arising. Regarding the second question, the patron maintains that, except for the functions assigned to the Chapter, all other functions, including festive Masses, Masses for the dead, novenas, triduums, and processions, must be performed by the Canon Regular, who therefore has the right to receive the fruits of the stall; and this is clearly evident both from the Apostolic letters and from the executive decree, as well as from common law. With regard to the Apostolic letters, he observes that the Supreme Pontiff has decreed that the care of souls for the entire parish of the major church should belong to a single Canon Regular, who, together with auxiliary priests, should perform the parochial duties. Consequently, he intended that the Canon Regular should receive all the emoluments of the stall, called "stola," derived from the care of souls, with the obligation of paying a sum of one hundred scudi to the auxiliary priests. To all of this, the Apostolic Executor has adhered, and therefore has decreed that the Canon Regular must perform the parochial duties, as any pastor would, and that all emoluments derived from the sacred functions performed by him in the sacristy of the Most Holy Sacrament should be fully received by the Canon Regular, with the obligation of sharing them with the auxiliary priests. Finally, referring to common law, he recalls that the Council of Trent, in session 23, chapter 14, on Reform, mandates that those who have the care of souls should celebrate Mass on Sundays and solemn feasts, in order to fulfill their duty. And with regard to festive Masses, he argues that the same must be said of Masses for the dead, the celebration of which belongs to the parish priest, because he is responsible for his parishioners and for all others within the parish.

[*Latin ed. p. 110*]

Those who are deceased should be buried in their parish church; unless, perhaps, they have a tomb elsewhere, where their ancestors have been accustomed to be buried from ancient times. (Cap. 6. Barbosa, *loc. cit.*, p. 3, cap. 26, n. 1.) It should also be understood in the same way concerning the fulfillment of the three-day prayers, or votive masses, and processions. For he observes, with Barbosa, *loc. cit.*, p. 1, cap. 9, n. 12, that the parish priest has within his own church as much power as the Bishop has within his diocese; and therefore, he should be held in the place of an Emperor

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and a King, and should fulfill the duties of the Apostles. Hence, it is not surprising that the Bishop himself had previously encouraged the canonical priest to perform the novena in honor of St. Charles. After these remarks, he concludes by stating that, just as the functions pertain to the canonical priest which originate and are based on the exercise of the pastoral office, so too do the emoluments of the stall pertain to him, which are derived from the same exercise, according to title IV of the aforementioned executive decree. Regarding the question proposed in the third place, he recalls that, according to law, the parish priest has within his own church as much power as the Bishop has within his diocese. From this, he concludes that the parish priest should precede all others within his own church in all matters concerning the office of the rector. (Barbosa, *de off. et potest. Par.*, p. 1, cap. 9, n. 5 et seq.) It is also established by law that the parish priest is obligated to bury his parishioners and all others residing within the parish in his parish church, unless they have a tomb elsewhere. (Barbosa, *loc. cit.*, p. 3, cap. 26, n. 1.) With these legal precedents established, he maintains that the funeral rites and the ritual absolutions are, by distinct law, the responsibility of the canonical priest, even if the Chapter is present; since the canonical priest has the right to perform the office concerning the deceased, and since he exercises the entire care, as any pastor of souls does, he should have the complete right to perform the funeral rites; for it pertains to him, by reason of his stall.

[*Latin ed. p. 111*]

GALTELLINO. Or, rather, what it contains. These provisions must conform to the prescriptions of the Roman Ritual concerning funerals, page 157, the laws of which Pope Clement XI commanded to be observed in all funeral ceremonies. Adding to what has been said, he states that no word is found in the Apostolic letters or in the executorial decree that grants the Chapter the power to perform funeral rites and ritual absolutions over the bodies of the deceased. Indeed, the contrary can be deduced from them, for in number VIII, it is written that it pertains to the Canon of the Parish to grant ecclesiastical burial to the bodies of the deceased and to perform the proper offices for the deceased. Therefore, whether one considers common law or particular law, there is no doubt that, even in the presence of the Chapter, the right belongs to the Canon of the Parish to perform both the funeral rites and the ritual absolutions. Then, proceeding to the fourth question, which concerns the dependence that Beneficiaries commonly owe to the Canon of the Parish, the defender argues that the Beneficiaries should be so dependent on the Canon of the Parish that they cannot in any way be freed from this dependence by the Archpriest of the Chapter, and this is required both by common law and by particular law. Indeed, by common law, because the Parish Priest who takes a priest to assist him in the exercise of his pastoral duties and rewards him at his own expense, certainly owes

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dependence on the Parish Priest in the exercise of that ministry. And by particular law, because the Supreme Pontiff Gregory XVI decreed that the Canon should exercise the entire care, together with the assisting priests who are dependent on him. The Apostolic Executor, in number X, states that the proctors, or Beneficiaries commonly called Domarii, in the exercise of the care of souls, should be "entirely dependent on the Canon of the Parish, as if from the Archpriest," and should be subject to him. Furthermore, he argues that what is required by common law and by particular law is demanded by the very nature of the pastoral office. For if any of the Beneficiaries acted according to their own will, nothing would result from their actions other than confusion, with danger to souls and scandal to the faithful.

[*Latin ed. p. 112*]

112. GALTELLI NOREN. Finally, he endeavors to demonstrate, from the common law, that Beneficiaries are obligated to assist the Canon Pastor in the preaching of the Gospel and in the instruction of the faithful. Indeed, it is certain that proctors, or auxiliary priests, are appointed to assist the pastor in all those things which he himself cannot accomplish alone, either because he is infirm or legitimately hindered, or because the multitude of the faithful is so numerous that he cannot, by himself, adequately repeat the preaching of the Gospel and impart the instruction of the catechism. For this help and service which they provide, a suitable portion is assigned to them from the revenues of the benefice. This right, demanded by the common law, is all the more to be upheld in a case governed by special law. For the Beneficiaries are obligated, by the foundation and by their corresponding remuneration, to assist the Pastor. Indeed, it is gathered from the Apostolic Letters that presbyters who are constituted as Beneficiaries have been established with the added obligation of assisting the Pastor in the exercise of the care of souls. The Apostolic Letters do not contradict the executive decree, but rather, on the contrary, confirm it entirely, as can be seen in section X, where the very words prescribed therein are read. Therefore, since it cannot be doubted that the Beneficiaries are obligated, by their foundation, to provide assistance to the Pastor, the author concludes that they are obligated to preach the Gospel whenever the Pastor is unable to deliver a sermon, either because he is infirm, or for some reasonable cause is hindered. Furthermore, they are always obligated to assist the Pastor in imparting Christian doctrine; and this practice is observed in all the parishes of the city. Having considered these matters, the following questions are proposed:

I. Does the right to administer Baptism and to keep the records of the baptized remain with the Chapter, or with the Canon Pastor, in this case?

II. Does the Chapter, besides its chapter functions, have the right to en-

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trust a task to one or the other of the Canons?

[*Latin ed. p. 113*]

GALTELLINO, REN. 113. Concerning the assistance of beneficed clergy, commonly called "domarii," in the celebration of other functions, namely, festive Masses, Masses for the dead, novenas, triduums, processions, etc., and whether the fruits of the stall are to be received in such cases.

III. Whether the canon, having the cure of souls, can, by established right, perform the funeral rites when the chapter is present, and whether the chapter or the canon having the cure of souls should perform the ritual absolutions in such a case.

IV. Whether the beneficed clergy, commonly called "domarii," are so dependent on the canon having the cure of souls that they cannot be exempted from this dependence by the archpriest of the chapter in such a case.

V. Whether these same beneficed clergy are obliged to assist the canon having the cure of souls in the preaching of the Gospel and in catechetical instructions in such a case.

RESOLUTION. The Sacred Congregation of the Council, after mature deliberation, decided on June 27, 1891, to respond as follows:

To the first question: The proofs regarding the constant and uninterrupted administration of Baptism by the chapter, without any objection, and the keeping of the baptismal records, are to be presented and substantiated.

To the second question: Affirmative, provided that it is not a matter of functions and rights that are purely parochial.

To the third question: If it concerns the funeral rites of parishioners, precedence belongs to the canon having the cure of souls, by reason of the stall; and the ritual absolutions belong to the same canon, by reason of his office. However, if it concerns the funeral rites of others, everything belongs to the chapter, namely, precedence and the ritual absolutions.

To the fourth question: Affirmative, insofar as it concerns the care of souls.

To the fifth question: Affirmative, provided that the parish priest is hindered.

Acts, Vol. XXIV, page 678.

[*Latin ed. p. 114*]

APUANA, FUNERARY MATTER. April 11, 1891. Session 25, Chapter 13, Concerning Reforms. Prior to the year 1888, there was a dispute among the parish priest of Saint Nicholas, within whose district is the city hospital of Apua, and other parish priests of the city, and especially the cathedral administrator, regarding the removal and burial of the sick who die in

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the hospital. Therefore, the question was proposed whether the cathedral administrator has the right to remove and bury his parishioners who die in the hospital of Saint Anthony. On May 19, 1888, the Sacred Congregation of the Council responded: "Affirmatively, and according to the intention. The intention is that the Bishop should ensure that the association of bodies is carried out according to the prescriptions of the Roman Ritual" (1). Consequently, not only the cathedral administrator, but also the other parish priests of Apua were able to remove and bury the deceased in the hospital without further dispute. However, the question remained regarding those from outside the parish: for the sick are often brought to the hospital of Saint Anthony not only from the town, but also from neighboring areas. The Bishop, although he considered the hospital to be exempt from the jurisdiction of the parish priest of Saint Nicholas, and knowing that the parish priest had a different intention, summoned the parish priest who at that time governed the parish in the title of economist, and spoke to him in this way: "If you are the parish priest of foreigners and outsiders from the city parishes, you must remove and associate them with the association, along with those who pay taxes, and those who cannot pay." This condition was added by the Bishop in order to satisfy the intention of the Sacred Congregation concerning the decent association of the dead. However, since the association, which is called "Charity," declared that it would not undertake the removal and funerals of the dead without charge, the matter remained in suspense. SUMMARY OF THE FACTS. 1. (1) You have this question in Volume XXI, page 201.

[*Latin ed. p. 115*]

APUANA 115. Truly, at that time, the confraternity of *Misericordia* spontaneously offered its services – a confraternity established within its own church and by the presiding pastor – to perform this pious funeral service, under the following conditions, which the Bishop approved and sanctioned, namely: both confraternities, namely, the one of Charity in *S. Nicolao*, and the one of the Most Holy Sacrament in *S. Greminiano*, shall freely associate their own brothers who die in the hospital; all others, whether of the city, the countryside, or foreigners, shall be associated by the confraternity called *Misericordia*, with this distinction: if the removal of the deceased is done at the will of the family or friends, the sum of 5 *libellae* shall be paid, which equals the necessary expenses. All others who cannot pay the sum of 5 *libellae* shall be taken to the cemetery before the hour of 2 or 24 at night, with the pastor performing the duties of the chaplain of the confraternity. And thus, a custom arose, so that, with a few exceptions, those who died in the hospital and belonged to the confraternities of Charity and the Most Holy Sacrament, the others were associated with the confraternity of *Misericordia*, but with this difference: if they are of the city, the pastor of the deceased shall accompany the

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confraternity; if they are from the suburbs or foreigners, the chaplain of the confraternity himself shall accompany. The confraternity, however, shall only collect 5 *libellae* from the wealthier. Thus, it happened that, for example, in the year 1888, when there were 53 deaths in the hospital, 15 from the city parishes, and 38 from outside the city, all were taken away by the confraternity of *Misericordia*, but only 22 paid the established sum. And so things proceeded peacefully until the year 1889, in which a new pastor, now called to *S. Nicolai*, wished to create a controversy, claiming and arguing that he wished to associate all those who died in the hospital from the five city parishes, because he is the pastor, and because the hospital is within the limits of his parish. The Bishop responds: "I would agree to this plan, although true jurisdiction does not exist, but the claim on the part of the pastor, because the hospital is independent with its own chaplain. But I cannot agree to this: for if associations are made at fixed hours of the day with the elaborate pomp that the new pastor demands..."

[*Latin ed. p. 116*]

116 In APUANA, certain rights are held by [the parish], namely: if the deceased's relatives pay 5 *libellae* to the confraternity of mercy, they must also pay fees to the parish priest. However, for free associations, the parish priest should also be present without charge. Nevertheless, if the families of the deceased, who pay 5 *libellae* to the confraternity of mercy, are unwilling or unable to pay the fees claimed by the parish priest, then perhaps scandals will arise, as was discussed in another matter; namely, that the bodies must be carried away solely by the *vespillonibus* [scavengers], or that the confraternity of mercy must carry away all bodies free of charge. This, however, it cannot do, because it would become an unbearable burden. From these words, it is clear that the Bishop should consider the petition of the parish priest of St. Nicholas, seeking to claim fees from associations of non-parishioners for the funerals of the deceased, as being to be rejected on two grounds: 1. because it is not based on any valid right; for, according to the Ordinances, if a hospital is exempt, then nothing concerning the funerals of non-parishioners who die within it can be claimed by the parish priest of St. Nicholas; 2. because it is inopportune. The exemption, which, apart from the Bishop, the administrators of the pious house defend to the best of their ability, was said in the aforementioned letters of the Bishop to originate from a decree of the great Duke of Tuscany and from a decree made by the Bishop at the time of his visitation. Therefore, regarding the question of whether the Ordinances concerning funerals of non-parishioners to be carried out by the confraternity of mercy are to be upheld in this case, the Sacred Congregation of the Holy Office responded on September 6, 1890: "Let the decrees of the year 1782 concerning the asserted exemption be presented, and let it be shown that they have been duly

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observed." Furthermore, neither the Bishop nor the administrators of the pious house, to whom the exemption of the hospital seemed particularly important, attempted to present these decrees, but the parish priest of St. Nicholas, against whom the decrees were invoked, himself presented them to the Sacred Congregation. First, in terms of time, a certain document was found dated April 23, 1782, in which Senator Bindus Peruzzi transmits a request made by the prior of the hospital to the Vicarius regium in APUANA for information and a vote. In sup-

[*Latin ed. p. 117*]

In Pontremoli, the chaplain of the Hospital laments that the parish priest of Saint Nicholas interferes with the administration of the sacraments and the performance of sacred functions, independently of the aforementioned chaplain. Senator Peruzzi, in a written response, indicates that it is the Prince's will that the chaplain celebrate Mass and administer the sacraments to the sick in the hospital, without any dependence on the parish priest. Thirdly, there is a decree issued by the Bishop during the Visitation on October 30, 1782, which reads as follows: "It is certified by me, the undersigned, that in the records of the sacred Visitation of the oratory of the hospital of Saint Nicholas in the city of Pontremoli, conducted on October 28 of the current year, 1782, among other documents, there appears one of the following tenor: 'Since certain discussions have arisen regarding the matter of jurisdiction between the Very Reverend Father Charles Frigeri, rector of Saint Nicholas, within the boundaries of whose parish the aforementioned oratory is located, and between the chaplain of the same oratory, after due consideration, the following is decreed, as follows: '1. That no ecclesiastical functions be performed in the aforementioned oratory, except on the feast of the titular saint. '2. That anniversary services and celebrations of Masses in fulfillment of bequests be transferred to the parochial church of Saint Nicholas, with the presence of the parish priest or someone delegated by him. '3. That the administration of the sacraments to the sick be provided by the aforementioned chaplain of the hospital, and that the parish priest in no way interfere in this matter, unless he is expressly requested to do so.' With these matters in mind, the prior of the aforementioned hospital protested that he could in no way permit anniversary services, offices, and Masses in fulfillment of bequests to be performed elsewhere, unless he had first received appropriate instructions on this matter from the auditor, or secretary of the royal court of Florence." Finally, there is a written response from the auditor, secretary of the royal court, addressed to Bindu Peruzzi, dated November 6, 1782, in which the Bishop of Sarzana proposes: 1. that...

[*Latin ed. p. 118*]

In APUANA, the Oratory of the Hospital of Saint Nereus could not perform other sacred functions besides the feast of the titular saint; 2.

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That anniversary Masses and votive Masses, with singing, should be transferred to the Church of Saint Nicholas, with the assistance of the parish priest; 3. That the administration of the sacraments to the sick should be performed by the chaplain. The aforementioned authorities approved of all of this and wished that the chaplain be invited to the parish while these Masses were being celebrated, so that he would not lose his proper income. These documents, according to the president of the congregation of charity, were taken from the hospital's archives and are conformable to the original manuscripts. And the parish priest of Saint Nicholas, aware of this, testifies that these matters are preserved in the archives of the Sarzanensis diocese, under whose jurisdiction the city of Apuana was at that time. Indeed, in the parish archives of Saint Nicholas, there is a historical account written by the parish priest Frigeri, who was the rector of Saint Nicholas at that time, a copy of which the current parish priest of Saint Nicholas has sent, and in which a portion of the aforementioned decrees is included. Therefore, it is not permissible to doubt the truth of these documents, given the confession of the witness. However, in the aforementioned historical account of the priest Frigeri, a note is added which, according to the witness, greatly diminishes the meaning and value of the aforementioned decrees, and to which, therefore, much attention should be paid, namely, that from these provisions, the parochial jurisdiction was not entirely given to the chaplain of the hospital; for the decrees speak only of assistance to the sick. The opinion of the parish priest, to what extent it should be considered, was left to the judgment of the Most Reverend Fathers. For the prohibition of performing sacred functions in a certain place can be a sign of exemption, or not, depending on the various circumstances or factors involved. Whether, in the matter of the loss of jurisdiction, it is a sign or not, the Most Reverend Fathers will determine. What is more important to note is that, regarding the subsequent observance, about which the Sacred Congregation wished to be informed, not a single word can be found in the new documents.

[*Latin ed. p. 119*]

APUANA 119. Perhaps something relevant can be found in folio 19 of the case file, dated May 1, 1888, where, in the Bishop's decree, certain matters are found that are not relevant (1). Therefore, having considered these and other things contained in the preceding folio, the purpose was to determine whether the Ordinary's decree regarding funerals of non-Catholics to be performed by the "Misericordia" confraternity is upheld in this case. RESOLUTION. After discussion by the Sacred Council on April 11, 1891, it was decided to respond: Affirmative, insofar as the parish priest of St. Nicholas has refused to accept the conditions of said decree. MAZARA DEL VALLO. BURDEN OF LIBERATION. On April 11, 1891. By summary petition. At the end of the century, the priest Joseph Cudia bequeathed a portion of his

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income to the cathedral parish, and a portion to the charitable home for orphans of the city of Mazara del Vallo, to be paid annually by his heirs. Those portions pertaining to the charitable home are bequeathed for the distribution of alms annually to the poorer residents, and for the offering of Masses and the purchase of candles. Furthermore, there is also a small sum of 6.37 livres, owed to no civil entity, but only by a debt of conscience. Moreover, in the year 1884, it happened that a certain young woman, 25 years of age, a former student of the charitable home in Catanzaro, requested to be married. And since a sufficient dowry could not otherwise be provided for her, SUMMARY OF FACTS. (1) Recall this question, Volume XXI, 201.

[*Latin ed. p. 120*]

120. In the matter of A.M., a petition was presented to the Sacred Congregation by a supplicating party, requesting that a certain sum be converted into a dowry for the aforementioned A.M., amounting to 600 livres. Responding to this, it was stated that, as a result of this payment, the family of Castelli would be released from the debt, and the heir to the goods and obligations of the priest Cudia would be relieved. However, while the matter was still pending, there was urgency, for the young woman was of marriageable age, the suitor was impatient, and yet he refused to marry her without a dowry. Therefore, the administrator of the pious house urged the heirs of Castelli to immediately pay the aforementioned sum, that is, 127 and 50 livres, promising that the request would certainly be granted. And the priest Joseph Castelli, who was the administrator and one of the heirs, agreed, and provided the sum, and thus the young woman was able to be honorably married without delay. However, shortly after these prayers, about which we spoke above, a negative response was received; which greatly disturbed the priest, who was not prepared to provide that sum if the family of Castelli were not released from the debt. And therefore, first the Vicar General of the Diocese, in the name of this priest, then the administrator of the pious house, with the support of the Bishop, and finally, again and again, the same priest petitioned for the granting of this release, especially considering that the sum corresponding to the debt had already been paid and spent. But to all these prayers, the same response was always given, read and negative, until August 20, 1888, when a decree was issued and the matter was concluded. Now, Francisca Castelli, niece of the priest Joseph Castelli, and co-heir with him to the goods and obligations of the priest Cudia, states that, being deprived of her parents, at the age of 30 years, she has not found a man to whom she could be married; but now she has found one, and therefore she states that the aforementioned priest Castelli, for whose sake she is speaking, may repay to her the sum of 127 livres, which otherwise would be paid to another, as an urgent contribution to her dowry, but in such a way that the aforementioned priest is relieved

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of all obligations of conscience.

[*Latin ed. p. 121*]

MAZARIEN. 121. A Synopsis of the Dispute. It has been noted that the grace requested is not alien to the institution from which it originates: indeed, it appears that the endowment, concerning which the question arises, is one of those established with the intention of providing annual assistance to the poor, orphans, and widows, and that the only change that occurs in the matter is that, instead of an annual payment, a single sum would be disbursed. However, the ultimate purpose would remain the same. Furthermore, if one considers that it is a small endowment, not subject to any civil obligation, and which can therefore easily be lost through negligence or malice, and that the female petitioner is the heir and probably connected to the founder – in which case, the change of will to provide the assistance is even more readily granted! as can be seen in the case of the endowment in Romana, June 2, 1852: moreover, in general, the cause of the dowry endowment is pious and should be pursued in every way, for by assisting an indigent woman, one also benefits religion and society, for it is of great importance that women be honorably placed in marriage. Finally, if one considers that the priest, who is the administrator of the inheritance, in good faith and with the intention of providing for a girl in a serious predicament, has disbursed the endowment as a single sum; it does not seem that the petition lacks grounds today. However, in order to prevent the endowment of the Cudia legatees from being further diminished, and to strictly preserve the testator's will, it would be advisable to renew the prayers in this case as well; it was deemed prudent by the Most Reverend Fathers. With these and other considerations in mind, the question was raised as to how the petitioner's prayers should be addressed. RESOLUTION. The Sacred Congregation of the Council, having considered the matter on April 11, 1891, decided to respond: For the grace, according to the prayers, let the words be spoken with the Most Holy.

[*Latin ed. p. 122*]

122 FROM THE DECREE OF THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF NEWCASTLE, OR ISCLAN, CONCERNING A PETITION FOR FUNDS. Dated March 20, 1891. SUMMARY OF THE FACTS. The Most Reverend Joseph Candido, the current Bishop of Isclan, presented a supplication on December 5, 1889, to the Sacred Congregation of Bishops and Regular Canons, stating that he had administered the finances of Newcastle until July 10 of that year, and that, beginning in the aforementioned month, he had received all revenues due to the episcopal table, which were recorded in the books, commonly known as the "Great Book," by the government. However, he had been unable to collect the fruits of the censuses and canons, which are usually

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paid in August of each year, and these had been collected by the canon Lauro, the procurator of the table, who, except for a portion of twenty days in July and the entire month of August, corresponding to the dues owed to the coadjutor of the Bishop of Valensise, should have delivered the remaining sum to the orator. However, having been unable to obtain anything, he earnestly petitioned that the Sacred Congregation of Bishops and Regular Canons would urge the Bishop of Valensise to restore the aforementioned sum. The administrator of Newcastle, informed of the matter, responded on March 4, 1890, that the revenues from the censuses of the year 1889, after deducting the expenses of collection, amounted to 1232.50 livres; that the portion due to the Bishop of Isclan should therefore consist of 616.25 livres, since, according to the norms provided by the Most Reverend Auditor, all revenues of the table of Newcastle were to be divided equally between the predecessor and his successor. However, he stated that 827.88 livres should be deducted from this sum of 616.25 livres; namely, 554.88 livres for taxes and annual contributions imposed by the demesne, and in addition, 273 livres for alms for masses, which he himself had received, but...

[*Latin ed. p. 123*]

NEOCASTLE, OR ISCLAN. 12 & the diocesan seminary, had returned the sums which were owed to it. In these circumstances, the administrator of Neocastle concluded that the Bishop of Isclan could demand nothing, indeed, that he himself was the creditor. Conversely, the Bishop of Isclan, to whom these matters were communicated, responded to the administrator of Neocastle with an equivocal statement, and through this, two things were confused, which should be entirely distinguished. With one word, the Bishop of Isclan contended that the Most Reverend Auditor had spoken of the method by which the revenues of the year 1889 were to be divided; whereas he himself claimed to be declaring the revenues from tithes and ecclesiastical dues for the four last months of the year 1888, which had been collected during the month of August 1889. Having considered these matters, he concluded that, if the revenues from tithes and ecclesiastical dues for the years 1888 and 1889 were added together, they would amount to 1232 pounds; of this sum, 1056.90 pounds belonged to him, because the diocese of Neocastle had been administered by him for 313 days, from the first of September until the 10th of July 1889. From this sum of 1056.90 pounds, it was asserted that the full amount of 554.88 pounds should be deducted, as was claimed on the contrary, but rather half of that amount, which is 277.44 pounds, which had been paid for taxes, commonly called "Manomorta," and for the annual collection; and also the alms for the masses, which were due to the diocesan seminary, amounting to 273 pounds, or 550.44 pounds. Indeed, from the 1056.90 pounds credited, having deducted the aforementioned 550.44 pounds, he stated that, according to his own calculations,

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506.46 pounds remained, which the Bishop of Valencise was to pay. Upon being informed of these last deductions by the Bishop of Isclan, the administrator of Neocastle replied that it was indeed true that the revenues from tithes in that diocese were paid up to the last day of the month of August; but it was equally true that such a payment was made not for the year that had already passed, but for the year that was about to begin. He argued that the revenues collected during the month of August of the year 1889 should be attributed to this year, and not to the year 1888. Therefore, given the decision of the Most Reverend Auditor, it was not clear how the Bishop of Isclan could claim three parts of the revenues for himself, leaving only one part for the Bishop of Valencise.

[*Latin ed. p. 124*]

NEOCASTRE. OR ISCLAN. Disputation concerning the tithes. It has been considered, as a fundamental matter, that the entire question revolves around whether the fruits and revenues of the tithes and ecclesiastical dues, which are paid once a year, specifically on August 31st, are to be considered as accruing entirely within that month; or whether one-third of them, namely that portion which accrues from the first day of September to the last day of December, is to be considered as accruing in advance, or not. While the Bishop of Valentia maintains that the payment of tithes, which takes place in August, should only be for the current year; however, he has not provided any legal or factual basis for this assertion. Conversely, the Most Reverend Pope Pius V, in his Constitution *Cum onus apostolicae servitutis* issued on February 16, 1569, concerning the payment of tithes, § 3, prohibited: "Payments which are commonly called anticipatory payments, or those made in advance." Furthermore, it is established by fact that Monsignor Barbieri, the titular Bishop of Neocastrene, at the time, when delivering the portion of the fruits due to him to Bishop Candido, adhered to the rule that the fruits of the new year should begin to accrue from the first day of September. Therefore, if the opinion of the current administrator of Neocastrene were to be followed, it would follow that the Bishop of Isclan would have to forfeit one-third of the fruits, tithes, and ecclesiastical dues, which is something that cannot be admitted under any agreement. With these matters thoroughly examined, the following question was proposed: Does Bishop Joseph Candido have the right to receive only the fruits of the tithes and ecclesiastical dues of the Neocastrene benefice for the first half of the year 1889 and the ten days following; or does he also have the right to the fruits of the tithes and ecclesiastical dues for the last four months of the year 1888? RESOLUTION. The Most Holy Congregation of Bishops and Regular Canons, after careful consideration of all matters, responded on March 20, 1891: Negatively to the first part;

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affirmatively to the second.

[*Latin ed. p. 125*]

125 FROM THE HOLY CONGREGATION OF INDULGENCES OF ALBI, concerning Sodalities of the Good Death established in that Archdiocese. The Primary Congregation, which is called the Good Death, has as its purpose, under the invocation of Our Lord Jesus Christ dying on the Cross and of the Most Blessed Virgin Mary, his Mother, to prepare the faithful to approach death in the most blessed manner, through the constant remembrance of the Passion of Christ, both publicly and privately, and above all, through a life rightly and Christianly lived. The general statutes of this Primary Congregation define certain pious exercises to be performed in common, so that the members gather in the Church of the Congregation, either every sixth day, or on Sundays, or at least once or twice a month, and in these pious gatherings, exhortations are given and prayers are offered together by the members. Since the statutes of the Congregations of the Good Death, which are established "in various parts of the world," must conform to the original statutes, as mentioned above, insofar as time and local circumstances permit, the following is asked: I. Whether a Primary Congregation of the Good Death can be joined to a Congregation of the Good Death which is established only under the invocation of Saint Joseph, completely omitting the title of Our Lord Jesus Christ dying on the Cross and of the Most Blessed Virgin Mary, and whose statutes make no mention of the aforementioned pious gatherings and exercises on certain days, and which merely prescribe that prayers be offered for each member when he approaches the agony, that the deceased members be accompanied to the burial, and that alms be collected for Masses to be celebrated for the deceased members: would such a Congregation not seem to be of a different name and institute? II. Whether Bishops who enjoy the faculty granted to them to establish Confraternities with Indulgences in their Dioceses, can...

[*Latin ed. p. 126*]

126 The Archdiocesan Confraternities of the same name and institution existing in the venerable City [Rome] can they establish pious Sodalities, as previously explained, with the Indulgences granted to the Primary Congregation of the Good Death? And, secondly, regarding the negative answer, should the aforementioned pious Unions of the Good Death, erected in the Diocese of Albi, seek canonical recognition, assuming the title of the primary Union and adhering to its statutes, as will be suggested by the local circumstances in which they already exist; or rather, should they be newly erected? The Sacred Congregation, entrusted with Indulgences and sacred Relics, having heard the opinion of one of its Consultors, responded to the aforementioned questions as follows: To the first question: No. To

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the second question: No. To the third question: No, regarding the first part; affirmatively, regarding the second part; provided that the recently issued Decree of this Sacred Congregation, dated September 17, 1887, is observed. (1). Given in Rome, from the Secretariat of the same Sacred Congregation, on July 17, 1891. I. CARD. D'ANNIBALE, Prefect. * S. ALEX., Archbishop of Nicopolis, Secretary.

Regarding the obligation of inscribing the names of the Christian faithful in the register of Confraternities that wear the scapulars. Francis Labis, Canon of the Cathedral Church of Tournay, humbly submits the following questions to the Sacred Congregation for Indulgences and Holy Relics: I. Is it truly required, besides the proper blessing and the rite of the habit, that the names be inscribed in the register of Confraternities for the three scapulars of the Most Holy Trinity, of the Blessed Virgin Mary, and of the Sorrowful Virgin (1)?

(1) You have this decree in Volume XX, page 364.

[*Latin ed. p. 127*]

From Tournay and from Mount Carmel, can the Faithful obtain the Indulgences attached to these scapulars? — Or rather, would such an inscription be considered merely appropriate, so that it can be omitted without loss of Indulgences? And to the first part, the answer is affirmative. Secondly, would it not be fitting to grant a dispensation regarding the inscription for places or dioceses where there are no monasteries of the Most Holy Trinity, of the Servants of the Blessed Virgin Mary, or of the Carmelites? Thirdly, would it not also be fitting to ratify and validate the receptions already carried out up to this point, even if the inscription was omitted, so that the Faithful are not deprived of the Indulgences and spiritual graces, and do not experience scandal? The Holy Congregation for Indulgences and Sacred Relics, having heard the opinion of one of the Consultors, responded to these questions as follows: Regarding the first question, decrees are given in one document of the Society of Jesus concerning Confraternities, under Question IV, dated July 16, 1887 (1); and in one from Cambray, dated August 18, 1868, concerning Question III (2); in one proposed by the Holy Congregation for the Propagation of the Faith, dated January 26, 1871, concerning Question I (3); and finally, in one from the Order of the Friars Minor Discalced and Recollects, dated April 27, 1887 (4). Regarding the second question, the answer is negative, and rather, all care should be taken to establish Confraternities of the Most Holy Trinity, of the Blessed Virgin Mary of Mount Carmel, and of the Seven Sorrows in one church or the other, especially (1) You have this decree in Volume XX, page 108. (2) This is found in Volume IV, page 219. (3) See the first question with its answer: Question I. Does a priest who has obtained from the Holy See the faculty to bless scapulars, thereby also have the faculty to bestow them upon the Christian faithful, and to enroll them in the Confraternities approved by the

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Holy See? Answer. To the first question, the answer is affirmative; however, it is so that priests who have legitimately obtained from the Apostolic See the permission to bless scapulars, should keep a private record of them, and as soon as it is convenient, they should transmit to the superiors of the nearest canonically erected confraternity the names of those received, so that they may be entered in the confraternity's register. (4) This decree is found in Volume XIX, page 556.

[*Latin ed. p. 128*]

128. The parish of Tournay, to which the names of the members inscribed may be sent. Regarding item III, it is to be affirmed that a petition for indulgences is to be made to the local Ordinary. Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 17th of July, 1891. I. CARD. D'ANNIBALE, Prefect. L. * S. ALEX., Archbishop of Nicopolis, Secretary.

FROM THE SACRED CONGREGATION FOR RITES: A notice concerning the feasts of the blessed confessors John Damascene, Sylvester the Abbot, and John of Capistrano, to be permanently inserted in the particular calendars.

The feasts of the blessed confessors John Damascene, Doctor of the Church (on the 27th of March), Sylvester the Abbot (on the 26th of November), and John of Capistrano (on the 28th of March), which are to be inserted in the universal calendar of the Church, according to the decree of the Sacred Congregation of Rites of the 19th of August, 1890, may be assigned to the nearest vacant days in those particular calendars which already contain other Offices on the respective days.

From the Secretariat, July 1891.

Sacred Congregation of Rites, on the 11th. L. * S. VINCENTIUS NUSSI, Secretary.

[*Latin ed. p. 129*]

129 APOSTOLIC LETTERS whereby the Virgin Mary is chosen as the heavenly patroness of the Independent Congregation. For the perpetual remembrance of this matter. Indeed, we are greatly pleased that the hopes we had, which we rightly and deservedly conceived regarding the recent establishment of the Independent Congregation under the authority of our most beloved son in Christ, King Leopold II of the Belgians, have been met with such favorable results, so that the light of the Gospel may shine upon those vast regions of Africa, still surrounded by the darkness of error. For since we established an Apostolic Vicariate in those regions through our letters, and entrusted its administration to the Congregation of the Immaculate Heart of Mary, commonly known as "of Scheutveld-lez-Bruxelles," which, as we have been informed, has readily offered itself to cultivate that hitherto uncultivated vineyard of the Lord, and has begun to promise

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abundant and fruitful results. Now, our hope is greatly confirmed and increased by the fact that the King of the Belgians himself, understanding that the origin and source of humanity lie in the Catholic religion, has so readily favored the propagation of the same among the peoples recently added to his dominion, that he has become a promoter and a willing patron of this propagation. Consequently, it has come to pass that many Belgians, following the example of the King, have eagerly begun to pursue studies for the Catholic ministry in Africa, and have undertaken this salutary work with such zeal that they have already accomplished much, for which we rightly congratulate them. In these matters, recognizing the singular benefits of divine providence, we are no less amazed by the dedication and constancy of so many excellent men, who, emulating the first heralds of the Gospel, and seeking no reward other than the salvation of souls, are sowing the word of God in the African regions, and are enriching them with their noble labor. Therefore, while we give thanks to God, the giver of all good things, we gladly offer deserving praise to those outstanding men who are leading the Christian culture of the Africans; and it is fitting to first mention our beloved son, Oswald van den Berghe, Parish Priest of the Church of Saint Joseph in Cattolica, who, with his zeal and expense, has established the first religious stations, a truly useful and fruitful work.

[*Latin ed. p. 130*]

130 Letters were prepared. We know that the Counts Maurice de Ramaix and Florimund de Bergeyck, who are partners with him in this work, and who are deserving of honor and praise for their propagation of the Faith, are chosen sons, and with them, Leon van Ockerhout, who, at his own expense, established a charitable house for the assistance of the poor. Indeed, we are not so moved by the zeal of the Belgians in illuminating the regions of the Congo with the light of the Gospel, as we are pleased by their singular piety, and by the great faith and hope which they place in God. For many of them, aware that their labors in cultivating the Lord's field, which is so deserted and arduous, will not be equal to the task, unless the Lord strengthens the heavenly vine, have considered it fitting to invoke the divine aid of, and to seek the intercession of, the Immaculate Virgin Mary. Moreover, they have considered it most fitting and opportune that, in leading the peoples of the Congo away from the superstition of error, and in bringing them to the true wisdom of Christ, and also in freeing them from the servitude of the Negroes, they should acknowledge the same heavenly Patron, the Mother of the Son of God, from whom we have received the light of the mind and the freedom of the children. In view of these things, Our beloved son, Peter Lambert, Cardinal Goossens, Archbishop of Mechlin, and honorary president of that group which promotes the expansion of the work of faith in the Belgian Congo, together with the Venerable Belgian bishops, along with the clergy and the supreme leaders

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of the Congo, and also with illustrious men of piety and generous liberality, among whom Our Lord commands us to commend the beloved son, Count Joseph de Hemptinne, the most astute president of the aforementioned group, presented to Us suppliant letters, in which they request that the Immaculate Mother of God, Mary, be declared the principal Patroness of the Independent State of the Congo, by Our Apostolic authority. We have readily agreed to these pious requests, because they are presented to Us with such evident zeal for religion; and we are not in doubt that the plan conceived by the esteemed van den Berghe will be carried out further, and therefore we are confident that in the free State of the Congo, a temple worthy of the piety of the Belgians, worthy of the majesty and grandeur of the august Patroness, will soon arise. Wherefore, that what is good and blessed may be, and that it may turn to the salvation of the African people, We, by Our Apostolic authority, through these letters, declare the Immaculate Virgin Mary, the Mother of God, to be the principal Patroness in Heaven of the Independent Congo.

[*Latin ed. p. 131*]

LETTERS 134: We establish, declare, and ordain a perpetual throne [of patronage] in this manner; We attribute to it all honors and privileges which, by right, belong to the Patrons of the places. And therefore, we will and command that the feast of the Assumption of the Blessed Virgin Mary, which occurs on the fifteenth day of the month of August each year, be held and celebrated there as a patronal feast. We decree that these Our letters shall exist and be valid and efficacious, and shall produce and obtain their full and complete effects, and that they shall fully suffice for those to whom they pertain, and that they ought to be judged and decided by any ordinary or delegated judges, and that they shall be null and void if, concerning these matters, anyone should knowingly or unknowingly attempt to interfere in any way. Notwithstanding anything to the contrary. Given at Rome, near St. Peter, under the Fisherman's Ring, on the twenty-first day of July, in the year 1891, in the fourteenth year of Our Pontificate. L. f S. M. CARD. LEDÒCHOWSKI. FROM THE HOLY CONGREGATION OF THE COUNCIL OF OLOMÚTZ. DISPENSATION FROM IRREGULARITY. On the 30th of May, 1891. By summary petition. In the past month of March of the preceding year, Francis, the parish priest and dean in the archdiocese of Olomútz, was compelled, by the judgment of physicians, to undergo the amputation of his left hand and arm, almost to the elbow. For the disease, which, without any fault of the dean, had arisen from a small feline wound, had so increased day by day, and had such fatal effects, that it would soon endanger his very life. After a long

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period of infirmity, he recovered, and COMPENDIUM OF THE MATTER.

[*Latin ed. p. 132*]

132 OLOMUCEN. Postquam, per virtute del lavoro notturno e di una mano abilmente costruita, ogni deformità era stata rimossa, le preghiere del S. C. C. furono accolte, affinché potesse ottenere una dispensa dall'irregolarità. Alle preghiere furono aggiunte le testimonianze dei medici, di cui alcune devono essere trascritti. "Il tronco dell'avambraccio misura solo otto centimetri di lunghezza, ma l'articolazione del gomito è rimasta sana, adatta a tutti i movimenti di questa articolazione, ovvero alla flessione, all'estensione e alla supinazione, che possono essere compiuti attivamente, cioè per volontà del sacerdote, e senza l'aiuto della mano destra." La mano di legno è descritta in modo tale da ingannare facilmente coloro che non conoscono la calamità. Si dice che il pollice sia leggermente mobile, in modo da poter tenere oggetti leggeri, mentre gli altri dita sono immobili e leggermente piegati, in modo da poter essere correttamente uniti con la mano destra. L'Arcivescovo ordinò che venisse eseguita la consueta prova davanti a due maestri di cerimonia, che ne redassero un accurato resoconto. Da esso risulta che le sacre cerimonie della Messa, fino alla frazione dell'ostia, furono compiute dal sacerdote con sufficiente diligenza. "Tuttavia," riportarono, "la successiva frazione dell'ostia presentò una difficoltà più notevole, alla quale il nostro sacerdote, afflitto da una tale sventura, cercava di porre rimedio. Poiché non poteva compiere la frazione sopra il calice, la compiva sopra il paten. Inoltre, una mano artificiale avrebbe potuto certamente fornire un certo aiuto nella frazione dell'ostia, trattenendo leggermente l'ostia, in modo che, durante la frazione, non si muovesse troppo sopra il paten; tuttavia, tale aiuto sembrava così poco significativo che il nostro sacerdote preferì utilizzare solo la mano destra. Infatti, poiché aveva a disposizione un'ostia di quel tipo, sulla quale erano segnate con due linee i punti in cui la frazione doveva essere compiuta – come sono le ostie che usiamo comunemente – il sacerdote di cui si parla, osservando queste linee, prima spezzava leggermente l'ostia, e poi, ruotando la parte destra dell'ostia avanti e indietro, compiva la frazione. Allo stesso modo, presto spezzava un pezzetto dalla parte sinistra dell'ostia. E va detto che questa cosa ebbe un buon esito, sebbene questa prova sia stata diversa da..."

[*Latin ed. p. 133*]

OLOMUCEN. This has happened thirteen times; for the priest had, in this matter, already acquired a certain skill. We add that, if the breaking of the Host is done gently, it does not seem that we should greatly fear the danger that some small fragments of the Holy Host might be lost. Only if, in the presence of a very large congregation in the church, the Host is softened by the heat, as is customary, does the difficulty of breaking the

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Host increase, and the assistance of a priest or deacon becomes necessary for the sake of the Sacrament. A difficulty of a still greater kind arose at the time of Holy Communion. Indeed, in order that the priest named might not be able to press his chest against the Lord with his right hand, he had to leave the Host lying on the paten; then, with only his right hand, he placed one part of the Host over the other part, so that he might receive the Sacrament; moreover, he could not immediately wipe the fragments remaining on the paten over the chalice, but after having perhaps collected the sacred particles on the corporal with his left hand, holding the paten with his right hand, he slightly raised the corporal, and placed the paten again on the corporal, so that, little by little, with his right index finger he might carefully take each sacred fragment, and carry it over the chalice, and deposit it therein. Furthermore, when receiving the Holy Sacrament, he could not place the paten against his chin; the subsequent purification could also only be carried out more gently.

Then, expressing his thoughts, the Archbishop writes: "We must not fear any scandal, nor any notable admiration of the people, if grace were granted in this case; rather, the danger of irreverence towards the Holy Sacrament can be avoided by the assistance of a priest or deacon, from the breaking of the Host to the purification of the chalice." And thus he concludes: "Finally, it must be said that the aforementioned person excels in integrity of morals and zeal for souls; his cooperation in the Lord's vineyard is desirable because of the scarcity of priests; moreover, he is a poor man, without any private means; with these circumstances being as they are, I dare to support his prayers and his work."

[*Latin ed. p. 134*]

134 OLOMUCEN. A Synopsis of Cases. GRACE SEEMS TO BE DENIED. It has not always been the same practice of the Sacred Congregation in granting such dispensations. Indeed, there are several examples in which the requested grace has been denied. It suffices to cite the case of a certain Francis in the archdiocese of Mediolanensis, whose petition, presented among the supplicating briefs on April 18, 1863, requested a dispensation from irregularity due to the amputation of his left hand. Although a testimony from the capitular vicar regarding his morals and the spiritual well-being of the faithful was present, the response given was: "It is not advisable." And indeed, this concerns a very serious bodily defect, by which the priest is rendered less suitable for performing the sacred ceremonies of the Mass, and for which there can be no remedy in the future. However, as can be seen in the aforementioned account, not all popular admiration, nor in all cases, the scandal of the faithful, or even less, disgust, is excluded. Nevertheless, on several occasions, considering particular circumstances and with certain precautions taken, the faculty to celebrate with only the right hand has been granted. The cases of Litomericen, on September 24

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and December 17, 1864; Brixinen, on September 12, 1868; and Tortonen, on July 18, 1868, are relevant. Thus, also on November 27, 1852, in Bergomen, to the orator, to whom the amputation had left only the third part of the arm, the Sacred Congregation responded: "Provided that he celebrates in a private oratory, and if it seems to the Bishop, with the assistance of another priest or deacon, that the grace of dispensation and habilitation is appropriate." However, there are not lacking reasons favorable to the priest Tauber at the present time. For his piety is highly commended, and the exercise of his ministry is deemed desirable in the face of such a scarcity of priests, while, on the other hand, the orator's poverty may encourage indulgence. Furthermore, the Archbishop himself removes the popular admiration and the danger of irreverence towards the Most Holy Sacrament. With these considerations in mind, the question was raised: how should the petitions be handled?

[*Latin ed. p. 135*]

OLOMUCEN. 135 The Sacred Congregation, having considered the matter on May 3, 1891, decided to respond: Regarding the granting of a dispensation, provided that he celebrate Mass with the assistance of another priest, or a deacon, according to the prudent judgment of the Most Reverend Archbishop.

RESOLUTION. MAJORCA. IRREGULARITY. May 30, 1891. Through summary petitions.

COMPENDIUM OF THE FACTS. The Bishop of Majorca recently presented the following to this Sacred Congregation: "James, of the diocese of Majorca, having reached the twenty-eighth year of his age, having completed his studies in the Conciliar seminary of the same diocese, and having been initiated into the minor orders, desires to be promoted to the sacred and major orders. However, since he has been afflicted with blindness from birth, so that he can scarcely read, even with the aid of spectacles, he humbly requests a dispensation from the irregularity due to his visual impairment, if such a thing exists... The undersigned Bishop, having become more certain of the truth of the aforementioned statements, cannot but state that, in his opinion, there would be some indecency in the celebration of Mass from the prayers; for since both of his eyes have been afflicted with blindness from birth, and although there is no external deformity, he can scarcely read correctly, even with the aid of spectacles, beyond a distance of more than ten centimeters; therefore, in order to read the lessons, he must be directed entirely towards the missal. Furthermore, it is to be feared that, due to this reason, the celebrant would consume more than half an hour in performing the sacred rite, to the great annoyance of the faithful, unless he is, before receiving the burden of the priesthood, diligently instructed in the secrets of the Mass. However, two physicians, with careful consideration, assert in writing that the celebrant will not become completely

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blind, unless other causes intervene; nor is there agreement among some theologians and canonists, whose opinions on this matter, after careful deliberation,..."

[*Latin ed. p. 136*]

136 MAJORCA. I have heard of the examination; for some considered the irregularity certain, while others, if I am not mistaken, rather guided by kindness, deemed it at least doubtful. Therefore, by common counsel, we decided to refer the case to the Apostolic See for a dispensation, for the sake of caution.

Synopsis of the Matter. Although the ancient laws of the Church have rather prescribed that defects of the mind, rather than of the body, should be considered in the promotion to the holy orders, nevertheless, a discipline has long prevailed, which excludes from the ministry at the altar those who are physically infirm, if such a defect hinders the proper exercise of the order, or brings about admiration and scandal. Canon 33, distinct. 55, cap. *Presbyterum*; De cler. aegrot.; and cap. Thomas, *De corp. vitiat.* Among these, the blind are commonly included by Doctors, especially when the defect of the eyes hinders the fitting celebration of the Mass and excites the admiration and boredom of the people. Therefore, it is not surprising that the Sacred Congregation has, on several occasions, refused ordination to those afflicted with such a defect, as can be seen in Vercelli, July 28, 1860; in Colonia, September 13, 1862, etc. However, on the contrary, there are not lacking dispensations granted by the Sacred Congregation in entirely similar cases, especially if some reason and the recommendation of the Ordinary were added, along with the prayers of the suppliant. And these are not lacking in the case of James. Moreover, the Archbishop of Majorca added: "Otherwise, the suppliant is a man of proven piety and good morals, with a proven vocation to the clerical state, with suitability for Gregorian chant, with a strong desire to be useful to the Church, to which he has already served commendably in this time, and finally, with the poverty of his parents, he is highly commendable." Considering these reasons, the Bishop, and not wishing to add affliction to the afflicted, does not hesitate to commend the requested grace to the Apostolic benevolence.

Having considered these matters, the question arose as to how the prayers should be addressed.

RESOLUTION. The Sacred Congregation, having knowledge of the matter on May 30, 1891, decided to respond: "According to the judgment and conscience of the Bishop."

[*Latin ed. p. 137*]

137 CAPUA PENSION. On April 11, 1891. Session 24, chapter 18, concerning reforms. Raphael, a priest, while serving as pastor of Saint Bartholomew in the city of Capua, was so afflicted by scruples that he was

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almost driven to madness. Repeatedly, it was proposed that he be relieved of the care of the parish, and, according to the testimony of the Most Reverend Archbishop, we know that he declared he would be content if he were granted a simple ecclesiastical benefice, which existed within the Diocese, of 170 livres, or a pension, to be assigned to the vacant parish, which could amount to approximately 300 livres. Furthermore, at that time, a certain chaplaincy was vacant in the church of Saint Marcellus, a position nominally held, but in reality, the only duty of which was to say Mass for the people once a month. Nevertheless, having escaped confiscation by virtue of this title, he still received his due stipend, amounting to approximately 2000 livres, according to the records of the Curia, or 1840 livres, according to a declaration previously made to the treasury, or even less, if one were to listen to the priest Raphael. Whatever the case may be, he enjoys this benefit with such honor that he is included among the pastors of the city, and, just like the other pastors, he may legitimately assume the title and insignia of a canon. Therefore, the Most Reverend Archbishop considered it to be the best course of action to grant this benefit to the priest Raphael, thereby relieving him of the administration of the parish. This proposal pleased the priest Raphael; and therefore, on February 27, 1888, the letters of assignment for the benefice were issued according to custom. However, in the terms of the grant, it was stipulated: "He shall pay an annual pension of 700 livres, free from all charges," said the Most Reverend Archbishop, "which, by the authority granted to us by the Holy See, we reserve for the benefit of the cleric or clerics whom we shall name." Shortly thereafter, on March 6, 1888, the pension was...

[*Latin ed. p. 138*]

138 In Capua, the benefice of Saint Marcellus was assigned for a period of time to the priest Munno, who provided assistance in the Capua Seminary to the education of the students. And the priest Raphael, when this was announced to him, without offering any objection, acquiesced; indeed, on June 10, 1888, before, of course, entering into possession of the benefice, he wrote a document in the Curia, in which he stated that he freely accepted the pension, and promised to readily fulfill his obligations. But in fact, it was not so; for after a year, he refused to pay the pension. Being summoned to the Curia by the pension holder, the reasons by which he justified his dissent were presented, both in writing and verbally, before the tribunal, or a certain commission chosen and delegated by the Ordinary. However, the reasons presented were deemed to be of no consequence; indeed, a draft of a formal sentence had already been prepared, by which the priest was condemned to immediately and fully pay the pension. But the Archbishop considered it more expedient to proceed in a simpler manner; and therefore, on September 19, 1889, he ordered that letters signed by the hand of the Vicar General be issued, in which a period of one month was

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specified for the payment of the pension. But the priest Raphael, preferring not to comply, chose to appeal to the Holy See, urgently imploring that the aforementioned sentence be revoked. A Synopsis of the Dispute. DEFENSE OF PRIEST RAPHAEL. Therefore, impugning the archiepiscopal decree of September 19, 1889, by which he was ordered to pay the pension, the priest Raphael argued that there is nothing in its origin, and that it is not a true pension, but a mere spoliation; by which the titular is reduced to misery and ridicule, after having served the Church for many years. For, after deductions, the remaining amount is 1389 florins; from which, if the pension of 700 florins for the first year and 700 florins for the second year are deducted, not only will there be no remainder for the beneficiary, but he will even be burdened with a debt, and moreover, he will be further indebted.

[*Latin ed. p. 139*]

CAPUANA 13: "Sit, quoad vivat." Therefore, it is granted only in the third year, and that with a better outcome. But even then, difficulties remain; for, since the pension almost reaches half of the beneficial income, it almost deprives the beneficiary of half of his income. Thus, while from the beginning he has gained nothing but burdens, in the third year and thereafter, he will scarcely have an income sufficient for his livelihood. However, this seems not only contrary to canonical equity, but also to justice itself, and is entirely unreasonable. Therefore, as the author concludes, the pension in question is not a burden, but a true plunder and an injustice, and therefore is null. Let it be objected that the priest Raphael accepted the pension voluntarily from the beginning. To this, it can be replied that he accepted it only under the impression that a portion would remain to him, which he needed for a decent sustenance, and which must always be deducted from the income of the benefice, and indeed before all other payments, as is stated in the text in chapter [reference missing]. Furthermore, according to *De Be praebenda* and chapter i of the same title, in VI, with *De Luca Be*, pensions are mentioned in several places. Therefore, the rule is that whenever the fruits of the benefice are not sufficient for the honest sustenance of the beneficiary, the pension, if any, must be reduced or abolished. Let it be further objected that the Archbishop of Enia proceeded according to apostolic authority in this matter. And to this difficulty, there is also a ready answer. Indeed, the apostolic penitential indulgence, which the aforementioned Archbishop claims to have used, confers the right and license to impose a pension, but by no means the amount, which must always be just and proportionate to the income of the benefice. Thus, even if this amount were predetermined by the authority of the Supreme Seat, it would nevertheless not be maintained, if it should later be proven that it exceeds what is due. Indeed, in the very decree *Cum nuperrimis*, S. C. Ep. et Reg, January 28, 1871, it is ordered that the moderation, even

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the extinction, of an apostolic pension decreed by authority be admitted, whenever the pension borders on injustice. It is established "that the loss or diminution..."

[*Latin ed. p. 140*]

140 In Capua, the income from benefices affects both the beneficiaries and the pensioners of the common benefice in such a way that, with the aforementioned incomes diminished or lost, the pensions must also be reduced proportionally, or cease altogether. Furthermore, the pension, concerning which the question arises, has, according to the priest, been legitimately withdrawn. Indeed, among the various reasons cited by the Doctors for retaining a pension on a benefice, the only one that could at least in principle be invoked in this case is the indigence of the pensioner and his merit. However, according to the accuser, the priest Munno is neither indigent nor particularly meritorious. Moreover, it is well established in law that a pension cannot be imposed without a just cause; cf. De Luca, cited above. Also, Reiffenstuel, ad tit. 12, lib. 3, n. 402*, and the well-known tit. 12, lib. 3, Decret., "ut ecclesiastica beneficia sine diminutione conferantur" (that ecclesiastical benefices be conferred without diminution). Finally, thirdly, the nullity of the pension is derived from an intrinsic defect in the form in which it was imposed. For in the letters of collation of the chaplaincy, the pension is reserved in favor of a cleric or clerics to be appointed by the Ordinary. But the Ordinary cannot reserve the pension for himself, or for a person to be named or approved by him, or for similar reasons; for then the reservation would be simoniacal, as stated in the Constitution of St. Pius V, as noted by Pax Jordanus, vol. 2, lib. 9, title 4, with Fagnano and others, concerning the Constitution "Intolerabilis" of St. Pius V. DEFENSE OF THE ORDINARY. However, on the other hand, it must be considered that, as stated above, the recurring testimony shows that the income of the benefice of St. Marcellus is now less than 1546 florins; and that, in the future, if the property of 5 measures, which has been leased for 100 florins per measure, is not leased in the future for only 50 florins per measure, then the income of the chaplaincy will decrease to 1300 florins. But even in this hypothetical loss, the beneficiary would still have a remaining income of 600 florins, after the pension has been paid and all debts discharged. Furthermore, the priest Raphael cannot, in any way, claim such a quantity of income, nor can he argue that it is insufficient.

[*Latin ed. p. 141*]

Capua was conquered for 14 pounds, since it was declared from the beginning that it would be given either a pension of 300 pounds, or even an ecclesiastical income of 170 pounds. Furthermore, it is not easily believed that the income of the chaplaincy, which, according to the most recent declaration made to the treasury, exceeds 1800 pounds, and which, according

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to the records of the court, reaches as high as 2000 pounds, is so much lower. Nor is it likely that property that has been rented for 100 pounds up to now will, in the future, yield only 50 pounds. Moreover, from the testimony of the pensioners, we know that this difference is not so great, for it is said that the contract of lease terminates on July 31, 1892; and therefore, the income has not been diminished. Consequently, up to that time, the income of 1546 pounds will remain with the plaintiff, according to his own confession. Furthermore, the Ordinary noted: according to the latest report submitted to the treasury, the income amounts to 1840 pounds, without fiscal burdens, so that the remainder is 1140 pounds for the plaintiff. This sum certainly seems sufficient for the honest sustenance of a priest, especially in a city where neither the ordinary expenses of life are burdensome, nor are the priestly ministries lacking in corresponding stipends. Indeed, it may be said that the pension seems excessive, at least in comparison to the income of the benefice. For although the extravagant lifestyle proposed by Raphael is admitted, nevertheless, even then, he would still retain more than half of the income. Moreover, it is an established principle that a pension can be imposed up to half of the income, provided that the remaining portion still provides a reasonable benefit to the beneficiary, as is stated in Devoti, vol. 2, On Pensions, no. 33, and Scavini, vol. 3, On Pensions, no. 700. In addition, the plaintiff has declared that he freely and spontaneously undertook to pay the pension, and that he left a written obligation to this effect in the court. It is not to be believed that he did this without sufficient knowledge of the matter or without full freedom; for he did not immediately execute the agreement, but after a time, indeed, after three months from the dispatch.

[*Latin ed. p. 142*]

142 CAPUA, not in the bull by which the benefice was conferred, as is recalled in the course of events. Therefore, besides the fact that, according to the law, in the legitimate granting of a benefice, the recipient appears to be obligated to pay a pension by virtue of a pact or a spontaneous promise, and therefore, against him, the principle of Reg. 21 iur. in VI, "quod semel placuit amplius displicere non potest," can also be invoked, along with similar passages in I. 5 c. De oblig. et act. I. 75 ff. De reg. iur. et 33 iur. in VI cum I. 1 ff. De pec. const: where it is also stated that it is a grave offense to deceive in matters of faith. Moreover, if the recipient of the benefice had, from the beginning, incurred expenses and contracted debts in order to pay taxes and other dues to the treasury or the court, this does not seem to diminish the obligation to pay the pension, because such things often happen when one begins to possess a benefice, and they are usually repaid only from the income of subsequent years. And all of these things pertain to the first objection, from which the nullity of the pension was deduced due to its manifest injustice. However, with regard to the defect of cause,

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or the violation of the form of assignment, the matter is resolved in a few words. Indeed, although the junior recipient of the pension may not yet be in extreme poverty, nevertheless, due to the services already rendered and other greater services that are expected from him in the future, it is his merit, according to the judgment of the Eminent Archbishop, that he deserves compensation. Furthermore, how much weight should be given to the judgment of the Ordinary in these matters, is not unknown to anyone, and it is expressly stated, lest we say more, in the constitution of Benedict XIV, Cum illud. With regard to the other matter, the Eminent Prelate notes in his letters that the name of the recipient of the pension was withheld, so that no difficulty or delay would be caused by the civil government from which the enforcement was sought. Therefore, the reason of prudence required that the name of the recipient of the pension be withheld: and it is certain that in this matter, no offense to the law is committed, nor can the nullity of the pension be deduced from it, as if from a defect of form. With these observations, the purpose is being clarified.

[*Latin ed. p. 143*]

CAPUA, 143. A question arises concerning whether a decree, issued in writing on September 19, 1889, is applicable in this case.

RESOLUTION. After examination, the Sacred Congregation [for Bishops and Regular Canons] decided on April 11, 1891, to respond: Affirmative.

NOVARA. JURISDICTIONAL MATTER. May 30, 1891. Session 25, Chapter 9, Concerning Reforms.

SUMMARY OF THE FACTS. On November 25, 1889, due to the translation of its rector, the parish church of Saint Mary of Pombia, under lay patronage in the Diocese of Novara, became vacant. Immediately, Peter Paul Boniperti, along with his uncles, Peter and Anthony Boniperti, appeared before the episcopal curia, asserting that they held the right of patronage over the aforementioned parish, and they presented a priest, Francis De Gasperis, as the candidate for the parish. However, shortly thereafter, a protest was presented to the Curia by seventeen inhabitants of that parish, in which it was declared that those who had been nominated could not claim any such right. Meanwhile, John Baptist De Boniperti, who resided in Parma, and his niece, Iosepha De Boniperti, residing in Milan, instructed Dr. Leopoldo Silvestri to, in their names, assert their right of patronage before the Bishop of Novara, and also to exercise the right of presenting a new parish priest. Since the collation to the vacant church had been reserved to the Holy See at that time, the Bishop informed the Apostolic Delegation of all these matters, and it is now proposed to the Sacred Congregation for examination. It is necessary to present the founding documents, as well as

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a detailed record of the presentations made.

[*Latin ed. p. 144*]

144 NOVARA. The oldest document presented is a certain agreement between patrons, which was presented to the Cardinal Bishop Borromeo in the year 1737; and which was approved by the Ordinary of Novara by decree of December 12, 1737, which reads as follows: "Having seen the tenor of the agreement, the methods by which the aforementioned Marchion D. Jerome Ferreri, on one hand, and D. Leander Boniperti, on the other, initiated the aforementioned patronage and the right of nomination for the aforementioned benefice and parish church of St. Mary in the place called Pombia, alternately; and having seen the aforementioned agreement as stated above, concerning the commission of the Most Eminent and Reverend Cardinal Bishop; and having seen the aforementioned expressed will, we approve and confirm it, and decree and declare that it may and ought to have its full effect; without prejudice to any third party; and so on." Furthermore, a double genealogical chart was presented by the parties involved, one of which, not excluding the other, appears to possess the character of authenticity, as recognized by the episcopal court. From this common root, Bernard Boniperti and his wife, Hyacinth Cattaneo, are said to have had five children, the youngest of whom were Leander, who entered into the agreement with Marchion Ferreri in 1737, and Charles Jerome. From the progeny of this Charles Jerome originate Peter Paul Peter and Anthony Boniperti, who presented the priest De Gasperis, while the nobles John Baptist and Joseph are said to have been born from Leander, Charles Jerome's brother. Therefore, the entire question is whether one Leander, excluding his brothers, was able to acquire and retain the rights of patronage. Regarding the exercise of the patronage, the Bishop states that, after the agreement of December 13, 1737, Marchion Jerome Ferreri nominated the priest Bellini on July 14, 1742; the priest Fasola was nominated on December 7, 1761, by Theresa Fasola, the wife of John Baptist Boniperti, and the mother of Leander. Other nominations were also made, but the records of which cannot be found.

[*Latin ed. p. 145*]

145. Finally, a document was presented, from which it was discovered that the presentation of the presbyter Angelus Silvestri to the parish of Pombia, made in the year 1832 by the descendants of Leander, had taken place. The Synod's opinion is as follows. And it can be argued, with the initial favor of Peter Paul, and of his uncle Peter and Anthony Boniperti, that the disposition of civil law allows that, after having been called to legitimate succession by the praetorian, edicts, and imperial constitutions, the cognates should possess the inheritance in equal parts, the German brothers

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being, as it were, in the same degree. Title V concerning succession, copies, and Title VI concerning the degrees of kinship, Book III of the Institutes. Therefore, since Leander de Boniperti is declared in the aforementioned convention to be the heir of Franciscus Cattaneo by intestacy, as the closest relative, it is clear that Leander's brothers, and in this case, Carolus Hieronymus, should also have come into the inheritance by the same right. Indeed, it is certain, and is confirmed by the genealogical schema, that both brothers are found to be in the same degree of kinship with Franciscus, since the mother of both was Hyacinthus Cattaneo, from whom the kinship is derived. Moreover, if the right of patronage was transmitted together with the inheritance, there appears to be no reason, nor can it be opposed by the adversaries, by which it should have been transferred to only one, Leander, excluding the brothers. Regarding this, Fagnanus, in Part II, section 3, concerning secret matters, chapter 8: "But the right of patronage itself is an individual thing, as is evident here, and belongs in solidum to each heir; and this is because, since it is a simple and indivisible thing, it passes to any heir in solidum, even if the heirs are from different and unequal parts. But in the matter at hand, we are dealing with hereditary patronage, which is perhaps inferred from the text of the aforementioned convention. It is said that the right belongs to Leander because he succeeded as the closest relative by intestacy to the inheritance and goods of Carolus Franciscus Cattaneo, his cousin; and these generic words could not have been used if there were no hereditary quality present." Cete, Acts, Volume XXIV, page XXIX, line 10.

[*Latin ed. p. 146*]

146. In the matter concerning NOVARA, although one could not place the nature of the case beyond all doubt, presumption always favored the inheritance. Indeed, it is a rule accepted by all doctors, as Cardinal De Luca calls it, a "certain and absolute" rule: "that one must not presume any different interpretation of the founder's will, whether explicit or implicit... the patronage is said to be hereditary to any, even those external, or intestate heirs of the family estate, as if it existed in the inheritance, being a part and member of it." *De iurep. disc. LX n. i.* From this, it is concluded that Leander entered into an agreement with the Marquis Ferrerio without any mention of his brother, which should not prejudice the descendants of Charles. Even more so, as stated above, the episcopal court of Novara, after the agreement had been approved by the Ordinary, took care to add these words to the decree: "always without prejudice to any third party." This clause, while removing all possibility of proving the patronage of one Leander, perhaps also suggests that at that time, something was known to the court regarding the rights of Charles Jerome. Nor could the silence of Charles Jerome and his heirs, or the contrary evidence, be validly opposed. For perhaps in the year 1737, when the agreement was made, Charles had

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already passed away, and his only daughter, living elsewhere, as can be seen from the document, was the only one remaining. Therefore, since the documents are lacking that could definitively establish the facts, one cannot urge such an argument in such obscurity. Furthermore, the evidence in this case is far from clear, nor is it established within a legitimate period of time, which would remove all possibility of doubt, but rather it is uncertain, ambiguous, and derived from conjectures, and therefore proves nothing. Pitonius, *Disc. eccl. addit. I n. 34* and *addit. XIV n. 41*. Indeed, over a period of one hundred and fifty years, only five parish priests of the patronal church of Saint Mary of Pombia are mentioned, of whom only two are said to have been presented by the descendants of Leander. From this, it may be inferred that other nominations of parish priests existed, but are now lost, and...

[*Latin ed. p. 147*]

NOVARA. In this presentation, Charles Jerome also participated. However, since these individuals have never previously exercised the right of presentation, it does not follow that they can now be excluded solely on that basis. Indeed, it is commonly accepted that the exercise of the right of presentation is facultative; therefore, it does not run afoul of the prescription mentioned in the writings of Peter concerning controversies regarding patronage, namely, section 66, paragraphs 30 and 32: "and this negative act does not extinguish the right of patronage, since to present is an act facultative, by whose omission the right of presenting is not lost, unless it occurs in contradiction with subsequent consent." Nevertheless, the favorable circumstances concerning John Baptist and Joseph Boniperti should not be overlooked. And first, the agreement mentioned above between Marquis Ferrerius and Leander de Boniperti appears to be explained in such a way as to demonstrate that the right now in dispute existed only between the parties themselves. For when the approval of the agreement was sought from the Cardinal Bishop, it was stated that documents had been presented which brought the matter entirely to light: Leander was admitted by the Holy See as a legitimate co-patron for one-half of the voice of the aforementioned parish church, as is evident from the documents presented. If we did not have these documents, it would not, therefore, be proper to diminish Leander's right. Furthermore, the assertions made by the opponents regarding the succession of brothers by intestacy are mere conjectures that are not supported by any probable argument. For from the fact that Marquis Ferrerius agreed with Leander regarding alternating nominations for the parish, it is presumed that the right of patronage was transferred to Leander. Nor has it been sufficiently investigated what laws or, rather, statutes particular to that time governed legitimate successions in that part of the Novara Diocese, so that this conclusion can be drawn from it. Moreover, in order to demonstrate that the opponents' right to

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presentation was valid, it would have to be proven that they possessed greater hereditary rights, which, as an "act of fact," is not presumed but must be proven by the one alleging it.

[*Latin ed. p. 148*]

148. NOVARIEN. It is necessary to consult Cardinal De Luca, *De iure patronato*, discourse LX, number 5. The clause in the approval, added by the Ordinary, "always without prejudice to any third party," might seem, due to the style of the court, to be a precautionary or doubtful clause, which are often added, especially in cases of patronage, as testified by Cardinal De Luca, *De iure patronato*, discourse III, numbers 13 and 14. Given these circumstances, it is more likely that the patronage of the parish of Saint Mary of Pombia is not hereditary, but either real or fideicommissary. And this is even more so because, at the beginning of the agreement, the Marquis Ferrerius is mentioned as the Feudatory of Varallo, Pombia, and "successions in inheritance and goods, etc.," which, although not explicitly stated regarding Leandro de Boniperti, nevertheless indicate that the patronage is held by both, equally, and with the same right of succession. Furthermore, from the genealogical chart presented by the opposing party, it is clear that Leandro was older than Charles Jerome; therefore, if the other brothers were deceased, it might be inferred that the rights of the firstborn had passed to him. However, the presumption of a hereditary quality in a doubtful case should be understood in such a way that it has no place if the nature of the patronage can be demonstrated by another argument, indeed, by a "circumstance that provides evidence" which supplements the foundation, as often taught by the aforementioned Cardinal De Luca, *De iure patronato*, discourse LVI, number 3. But, assuming that some doubt still remains regarding the nature of this patronage, it is certainly argued that it is diluted by the most recent state and by an unforgettable observation, which cannot be declared uncertain. Indeed, from the year 1742 until the present, five appointments of pastors have been made, which, without any interruption, seem to have perfectly filled the entire period of one hundred and fifty years. Of these, three were made by the Marquis Ferrerius, and conversely, two by the descendants of Leandro, to which the third appointment pertains. These appointments were made privately, without the knowledge of others from the family of Boniperti, because they resided there, and never achieved a peaceful...

[*Latin ed. p. 149*]

NOVARIEN. 449. A possession, once interrupted, does not revive. Indeed, to attain the ultimate state of a right, it is not required that numerous presentations have been made over an immeasurable period of time; for when it is a question of ecclesiastical patronage, the prescription certainly applies only against the patrons, and, according to the Doctors, a single act

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of presentation, with the due time elapsed, suffices, as stated by Barbosa in the 25th session, chapter 9, concerning reforms, paragraph 22, of the Council of Trent; and by Ferraris in *Juspatronatus*, article 1, number 41. The due time, established by a lapse of one hundred and fifty years, is one that no one can deny. For there exists a centennial and unforgettable observance, of such power that, unless contradicted by contrary proof, no more valid title can be alleged, even in matters of patronage, as stated by De Luca in *De iurep. summ.*, number 51. Therefore, those who are in quasi-possession of the right to present candidates conclude that nothing needs to be changed. As the Holy Roman Rota declared in the case of *Mantuana* before Ursino on June 3, 1689, in the section "Altera autem," "observance is the best interpreter of any disposition, and it rightly declares not only the quality of the patronage, but also which persons are included in it." With the arguments balanced on both sides, the following question was to be resolved: Whether and to whom should the institution be given to the parish of Saint Mary of Pombia.

RESOLUTION. The Sacred Congregation, after deliberation under the date of May 30, 1891, decided to respond: The institution should be given to the one who is presenting or is to be presented by the successors of Leandri Boniperti, with the right of all parties to act in the petition before the Episcopal Curia concerning the pertinence of the patronage.

[*Latin ed. p. 150*]

CUNEEN. REGISTRY OF ALLOCATIONS. Day 30 of May, 1891. Session 24, chapter 13, concerning reforms. The chapter of Saint Mary, commonly called "del Bosco," in the city of Cuneo, which in the year 1817 was elevated to the dignity of a cathedral chapter by the Most Holy Pope Pius VII, was formerly composed of nine canons. Of these, three held benefices and served in the parish within the city; the remaining six were subject to lay patronage. The revenues of the canonries derive from two sources: namely, from the benefices and from the common mass. The benefices, which are quite distinct from one another, still vary greatly in their value; some yield annual revenues of eight hundred livres, while others do not reach eighty livres. From the common mass, after deducting various expenses, daily distributions are made, which those who participate in the divine services receive, according to the norms of the Council of Trent. These distributions, with the exception of the second and third dignities, which receive a smaller portion, are usually divided equally among the canons, so that each, after deductions made by the chapter, formerly amounted to three hundred and fifty livres. After the so-called civil law was promulgated on August 15, 1867, which stipulated that canons in cathedral churches should not exceed twelve in number, seven canonries were suppressed in the chapter of Cuneo. Among these, in addition to six benefices subject to lay patronage, was the canonry of Delia Chiesa, which was of mixed

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jurisdiction; however, in the year 1874, upon appeal by the chapter, it was restored, and in its place, the canonry of Septeme, also subject to lay patronage, was suppressed, which was held by Quaglia. However, until those who held the suppressed benefices should die, and only three still remain, the canonries that become vacant are temporarily...

COMPENDIUM OF FACTS.

[*Latin ed. p. 151*]

CUNEO. 151 were subjected to suppression, and the chapter was gradually reduced to 12 canons, as established by law. Furthermore, on July 7, 1866, and August 15, 1867, more unjust laws preceding the spoliation came into effect. Indeed, the conversion of the church's assets, with the exception of those of parishes, had been decreed, and their income was supposed to be taxed at thirty per cent. This tax, which was most grievous, since it withdrew thirty out of every hundred parts of the income and assigned it to the treasury, affected the individual prebends of the Chapter of Cuneo, as well as the common fund for distribution. And since the fund for distribution amounted to 14,075.08 livres annually, a letter from the official of the treasury, dated April 14, 1869, stated that "the amount of the 'tax of 30%' due on the entire property of the Chapter, amounting to 14,075.08 livres, must be paid." It is true that the Chapter, from the 14,075.08 livres which are reported as the income of the fund, only allocated 6,230 livres for the daily expenses of the canons, while the remaining 7,845.08 livres were allocated to fulfill various obligations. Therefore, it is stated that this imposed burden caused a loss of 222.24 livres to each canon. However, a remedy for this spoliation was provided by a new law of the year 1873; by which it was stipulated that the tax of thirty per cent should only be applied to that portion of the annual income exceeding 800 livres for the canons, and 500 livres for other benefices of the cathedral churches. This provision shall not apply to canons whose income exceeds 1600 livres, nor to other benefices whose income exceeds 800 livres. Then, a restitution was made by the treasury of the sum that had already been deducted beyond what was prescribed by the new law, which amounted to 240 livres for each canon in the Chapter of Cuneo. It should be noted that, in addition to the dignities, only four canons, namely Ghisolfi and Delia Chiesa, were counted. Indeed, since both these canons, like the others, received a restitution of 240 livres, it happened that while the others were fully restored, these two suffered a reduction of 800 livres due to the thirty per cent tax on the amount exceeding that sum.

[*Latin ed. p. 152*]

152 CUNEEN. they ought still to have borne. And since, as stated above, the canonical revenues in the cathedral church of Cuneo are combined with

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a double income, the question arose as to whether, and in what proportion, a particular, or rather, a common distribution of the tax should be made. The officials of the treasury, previously concerned with providing and restoring funds, after restoring the books of canonry number 240 to Ghisolfi, recorded in book 255 a favorable provision, whereby the revenue again reached 750 livres, and only 15 livres were allocated to the common fund. Similarly, they divided the 240 livres assigned to the possessor of the canonry of Delia Chiesa, so that the provision increased again to 607 livres, while the common fund received only 38.94 livres. The Chapter received this division poorly, and since the treasury declared that it "did not bring any consequence in order regarding the internal constitution of the chapter," a new, more equitable distribution was considered. Therefore, considering that, with regard to other canonries, the common fund had received a restoration of 197 livres for each, it was desired that even the more affluent provisions should restore an equal portion. Hence, it was argued that the theological canonry of Ghisolfi and the provision of Delia Chiesa should each restore annually 182 livres and 158.06 livres, respectively, to the common fund; meanwhile, however, the disputed revenues were deposited in the treasury of the chapter. From this, a serious and prolonged dispute arose between the chapter and the canons John Rossi and Charles Pellegrino, possessors of the canonries of Ghisolfi and Delia Chiesa, which, since it could not be resolved, was finally brought before the Holy Congregation. A Synopsis of the Dispute: The canons Rossi and Pellegrino, who are the parties involved in this case, maintain that the sum of 240 livres should be divided in such a way that the provisions of Ghisolfi and Delia Chiesa are restored first, and only what remains should be allocated to the common fund. Therefore, they recall the provisions *before* the law, which *appear to favor the two canons*.

[*Latin ed. p. 153*]

CUNEEN. They state that the endowment, which they call "conversionis," was entirely distinct from the principal sum, consisting of immovable property, and that if it were compelled to bear a loss, only those who held it would suffer the damage. Thus, they also maintain that the distribution of the principal sum was entirely separate from the individual benefices, and that all always shared equally in any diminution, without any justification. Therefore, it sometimes happens that the quotas assigned by the founders of the newer canonries to the principal sum have suffered some loss, but that the individuals holding the benefices have not been required to contribute anything to restore it. They affirm that this practice still prevails in the chapter of Cuneo. Indeed, they say that there are still three canons who possess benefices that have been suppressed by the government, and two others who hold canonries that have been purchased from their patrons, and that, considering all of these, the common principal sum has not gained

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even a single denarius in the restoration of taxes, and yet they are admitted to receive their distributions without any distinction from the others. Given this situation, if the treasury has first taken something separately from both the benefices and the principal sum, and then has restored what it took from the benefices, there is no reason why the common principal sum should be held liable, since they have merely received back what was already theirs. They ask, "Who would demand that I compensate Titus for the loss he suffered yesterday at the hands of robbers, when today I have been fully restored, and Titus has recovered only a portion of what he lost, and that through my efforts?" Therefore, they conclude that the principal sum is indeed due, but that it should not be paid by the benefices of Ghisolfi and Delia Chiesa, but rather by the treasury, the one who caused the loss. Furthermore, they argue that the restoration of the common principal sum, when it involves a diminution of the benefices, is contrary to the sacred canons, citing chapter 36 of "De Praeb, et dignit." – there – "We shall respond to your inquiry in this manner: it was not our intention that, for the restoration of the aforementioned benefice, any new sum should be levied." However, they argue, if the division of one benefice is prohibited for the sake of the restoration of another, then neither will the common principal sum benefit from it.

[*Latin ed. p. 154*]

154 CUNEEN. The agreement should be restored, because since the same reason applies to both cases, the same disposition of law should be applied. Therefore, it is inappropriate to invoke the decrees of the Holy Council of Trent regarding the establishment or increase of daily distributions. For, from the fact that it has been established that one-third of the fruits should be converted into daily distributions, and that it is also permissible for Bishops to suppress some benefices for this purpose, it does not follow that the chapter has the right to arbitrarily diminish the revenue destined for the endowment of particular benefices. And here, they state that the common fund in the Cuneo chapter was not established with one-third of the revenues of the benefices, but with a certain sum assigned by the founders, for almost all the canonries are subject to patronage, and this was very varied, although the fruits were distributed in equal proportions according to the service rendered to the canons. Therefore, they proclaim that the partition of 240 livres requested by the chapter is in no way in conformity with canon law, with equity, or with the custom of the chapter. Nor do they perceive in any way that the disposition of civil authority, which wished to subject those who enjoyed a beneficial income of more than 800 livres to a tax of thirty per cent, presents any obstacle. Indeed, it is placed beyond all doubt that no civil power whatsoever has any right in ecclesiastical matters and persons, so that if it were to decide anything even for the benefit of the Church, such a law would be defended with all

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firmness and strength. Innocent III, cap. Ecclesiae De const. Therefore, the chapter undertakes a futile effort when it diligently examines the spirit of the law, which would more properly be called theft than law. Moreover, they believe that only the financial aspect should be considered, so that it may be seen to whom the sums taken away are intended to be restored; which, however, is abundantly demonstrated in the title and inscription on the public debt documents. Especially because, as the canons Rossi and Pellegrino strongly complain, when a partial restitution was made by the treasury, the chapter did not move a stone to ensure that a larger sum was inserted in favor of the common fund, with the result that the endowment of benefices was harmed.

[*Latin ed. p. 155*]

CUNEEN. 155 is recorded; nevertheless, since both canonries of Ghisolfi and Delia Chiesa were vacant at that time, it was by no means able to be achieved. They assert, however, that it was wrongly stated that the prebend of Ghisolfi received an annual augmentation of 150 florins from the canonical endowment of Abella. For, perhaps, the will of the pious testator, which ought always to be inviolably observed, aimed at increasing the canonry, which, indeed, has special obligations attached to it. Furthermore, no damage resulted to the chapter; for the law of August 15, 1867, only applied the thirty percent tax to the ecclesiastical revenues existing at that time, and not to those that were subsequently received. Therefore, since the canonical endowment of Abella was first received on January 1, 1869, there is no reason why the chapter should doubt that this was the cause of the diminution of the sum restored from the treasury; which also clearly appears from the documents of the treasury. Finally, they mention in their favor the case of Theanen, which was brought before the Sacred Congregation of the Council on June 15, 1889, and March 19, 1873, which appears to be entirely similar to the present case. There, the matter concerned the division to be made of the sum restored by the government under the law of June 19, 1873, among twelve canons, of whom only four received an income exceeding 1600 florins. The eight poorer canons, adhering to civil law, wished to exclude the others from the benefit of the restoration, while the latter maintained that the treasury had, in fact, restored the common fund, and therefore the sum should be divided equally among all. To the question, "Whether the restoration of that portion which the government had long ago deducted for the thirty percent tax should yield in favor of all the canons, or rather only to eight," the answer was given: "Affirmatively to the first part, negatively to the second." Therefore, they infer that there is nothing to prevent the prebends of Ghisolfi and Delia Chiesa from being richer, so that the damage to the common fund may be equally distributed among all. (1) (1) Compare Volume XXII, 287, where the case of Theanen

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has already been mentioned.

[*Latin ed. p. 156*]

156. On the other hand, the patron of the chapter, in his argument, attempts to circumscribe the client's primary intention. He states that, although the chapter lacked sufficient reasons to demonstrate the restitution of the mass from the benefices listed in the books, it nevertheless proposed demanding only 164.75 florins from each benefice, considering that there were 12 rather than 10 canons to be provided for in the division of the sum restored by the treasury. Therefore, he requests that the benefices of Ghisolfi, amounting to 149.75 florins, and the benefice of Delia Chiesa, amounting to 124.81 florins, be restored to the common fund. Then, considering the force of the law promulgated by the civil authority on June 19, 1873, he observes that the law precisely intended to burden those who enjoyed greater revenues, to the relief of those who held smaller benefices. Therefore, in order to establish the thirty percent tax, account must be taken not only of the ordinary endowment of the benefice, but also of any fruits that the beneficiary permanently receives for the sake of his office. From this, he concludes that the division of the sum restored, between the benefices of Ghisolfi and Delia Chiesa and the common fund, as carried out by the chapter, is not in accordance with the law, but rather is merely a measure adopted by the officials for the convenience of the administration. It would be the case that the two canonries, which enjoy revenues exceeding 800 florins, and which are therefore subject to the tax, would receive nothing from their own revenues, while, on the contrary, their burden would be borne by the common fund, and therefore also by those whom the law intended to exempt from the burden due to the smallness of their revenues. Therefore, he continues, not only the will of the legislator, but also the rules of justice and equity are violated when the wealthy become richer at the expense of the poor. Moreover, the tax was paid on revenues of the mass that were not purified from the burdens and expenses inherent to them, which absorb a greater part of the fruits. However, having accepted the division proposed by the chapter, the patron believes that all these defects would be removed, and equality restored between the canons in terms of burdens and assets. He states that nothing prevents this arrangement from appearing favorable to the chapter.

[*Latin ed. p. 157*]

CUNEEN. 157. No concession can be found in the literal wording of the law; for, as indicated above, it is in the spirit of the law. Therefore, it is understood that the income is to be considered after deducting burdens and expenses, so that, as stated in libellus 240, each canonry should contribute lib. 123.60 to restore the common fund, in addition to the tax of

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lib. 412, or that the amount taken from each canonry by the burdens that weigh upon it, is one. This is considered by the very officials of the treasury, as can be gathered from the letter of September 19, 1874. Furthermore, having favored the mass with this deduction, the patron believes that the remaining amount, that is, lib. 116.40, should be divided in such a way that account is taken of the taxes paid for the revenues of both the praebend and the mass, after deducting the burdens. Therefore, assuming that the quota for the mass is in libelli 340, if a proportion is established, he affirms that it fully answers the petition of the chapter. Furthermore, he points out that what he has said so far is in accordance not only with civil law, but also with canon law, and especially with the laws of the Council of Trent. For it has been established for the benefit of the divine cult that daily distributions were instituted, so that the canons might more promptly and frequently attend the church to perform the divine services. Ferraris, voce *distributio*, art. 6. Such distributions, it is noted, enjoy so much legal favor that the Fathers of Trent expressly decreed in Session 21, chapter 3, *De Reform.*, that if they were neglected because of their inadequacy, or if they were not sufficient for honest sustenance, they could be increased by the revenues of praebendae, or even by the suppression of some benefices. Therefore, from all of this, it is clear that the Holy Synod showed more concern for the mass than for the praebendae, since, as it itself says, it wanted each praebenda, not for an equal sum, but rather for an equal quota, as the amount of revenue was greater or lesser, to contribute to it or to increase it. Furthermore, the advocate believes that special circumstances concur that favor the chapter. He recalls that the canonry of Delia Chiesa, after a dispute with the chapter regarding expenses, was substituted.

[*Latin ed. p. 158*]

•158 CUNEEN. It appears that, in the place of the canonry of Quaglia, for which the treasury had assigned 174.44 *librae* due to the remission of taxes, the sum was not fully paid. Indeed, since only 38.94 *librae* were paid for the canonry of Delia Chiesa, it seems just that the possessor of this prebend should, in some way, compensate the chapter for the expenses and care involved. Regarding the canonry of Ghisolfi, it is noted that in the year 1869, a donation of 150 *librae* per year was made by the canon of Abella, not in favor of a specific prebend, but in favor of the canonry in general. Therefore, it is considered that this sum should be divided between the prebend and the treasury, just as in 1838, Bishop Amadeus Brun considered a similar bequest from the canon of Dogliani to be distributed, so that of 507 *librae*, 300 would be given to the prebend and 200 to the treasury. Furthermore, it is added that, according to the law of 1873, the treasury delivered all revenues, both of prebends and of the chapter, to the treasurer, and not to the royal sub-economus, as would have been necessary when both the canonries of Ghisolfi and Delia Chiesa were vacant before the gov-

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ernment. Indeed, it is stated that, if the revenues of the prebends were paid, the royal sub-economus could recover the sums paid from the chapter. These matters require no proof, as they are well known and admitted even by the adversaries. Finally, concerning the accounts of the canons Rossi and Pellegrino, it is noted that the argument is irrelevant, either because there is a rule stated there which admits of an exception in this case, or because it does not concern the integration of one prebend with another, but the division between the prebend and the treasury of a sum previously taken from the treasury and then restored. Moreover, the analogy is much weaker than that of one who, along with Titus, was robbed by thieves. For, in that case, it is about one who, having both his own and a common fund with others, was robbed of both, and the question is whether it is just that, from the sum restored to him by the thieves, he should fully restore his own fund and leave almost nothing for the common fund. If the ministers of the treasury preferred the restoration of the prebends, this was only for the convenience of the administration.

[*Latin ed. p. 159*]

CUNEEN. He estimates that 159 [persons] have expressed their opinion, stating that they do not wish to interfere in matters concerning the organic constitution of the chapter and its internal administration. He does not believe that it is proper to obstruct the custom hitherto observed, whereby all have equally borne the expenses of the common Mass; for in this case, it concerns a partial reimbursement which ought to be common, just as the common expense had been. He confirms all of this, asserting that the tax of thirty for one hundred [units] exhibits an analogy with another tax, called the "quota di concorso," imposed by the subalpine government on May 29, 1855. At that time, although official treasury officials wished to subject the distribution of the Mass to charges, the Chapter obtained a judgment from the highest tribunal, whereby only those with larger endowments were obliged to contribute to the tax. Finally, he observes that, although in the present matter the discussion concerns only the two canonries of Ghisolfi and Delia Chiesa, given the response of the Sacred Congregation of Councils, the rule will be for the division of the *summa*, also with regard to other endowments that are in a similar condition. Having considered both of these matters, the purpose was to resolve the doubt as to whether and how the *summa* assigned by the treasury for the partial reimbursement of the canonries of Ghisolfi and Delia Chiesa should be divided between the endowments of those same canonries and the common distribution of the Mass.

RESOLUTION: The Sacred Congregation of Councils, after deliberation on the matter on May 30, 1801, decided to respond: Affirmatively, in proportion to the damages, both for the endowments and for the Mass, and

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furthermore.

[*Latin ed. p. 160*]

160. FROM THE DIOCESE OF CALGARI: On May 30, 1891. Session 24, chapter 18, concerning reforms. The priest Daniel, having governed the parish of Ussana in the Archdiocese of Cagliari for approximately two years, around the year 1885, experienced certain difficulties in the exercise of his ministry, due to some animosities he had incurred. Therefore, before the Ordinary, he presented his resignation from the benefice. This resignation, the contents of which are not found in the records, was, according to the Archbishop, presented purely and simply, and was immediately accepted by him. However, the priest contends that this resignation was made under a condition, although he himself admits that no mention of a condition is found in the written documents. For he states that he sent word of his resignation to the parish, because he had received a promise from the Archbishop of obtaining a better parish in Quartucciu, for which, moreover, permission was to be obtained from the Holy See to dispense with the customary examination. Indeed, at that time, such petitions were presented to the Holy Congregation. And on May 4, 1885, an indult was granted to the Archbishop, so that he could confer the aforementioned parish upon the priest Daniel without the customary examination. The appointed day arrived, but the priest Daniel did not appear for the examination in the Cagliari Curia; however, the following day, he presented himself, only to find that the synodal examiners were absent on that occasion. In the meantime, the office of administrator or pastor of the parish of Quartucciu was demanded of him; but even there, the animosities of his people, entrusted to his care, stirred up such feelings in him that the Archbishop considered it advisable to withdraw from the intention of granting him the new parish. Then, the priest Daniel came to Cagliari, and, since a penitentiary position was vacant in the metropolitan church, he presented himself for examination in the years 1886 and 1887, proceeding according to the form of the Bull *Nuper* of Clement XIV concerning the island of Sardinia, before the chapter, but he was not elected on either occasion. SUMMARY OF THE FACTS.

[*Latin ed. p. 161*]

CALARITANA. Sixteen years after the urgent shortage of priests, the Archbishop again urged Priest Daniel to accept a parish assignment, and therefore, first, the parish of Saint Eulalia in the city of Calaritan, then the care of the Vicariate in the town of Saint Sperato, and finally, the office of assistant priest in the place of Guasila, all of which he refused, unless at least the title of canon, even an honorary one, were added. Therefore, the Archbishop, by decree of January 28, 1888, imposed upon him the penalty of suspension from divine duties, which he had already threatened; but on Febru-

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ary 11 of the same year, he absolved him, upon a written promise from him to accept the office in the town of Guasila, after having barely completed a forty-day period of preaching. However, being reluctant to comply with the established procedure in due time, he was again suspended on April 11, 1888. At that time, Daniel, appealing to the Sacred Congregation of the Council, raised his complaints against the Calaritan Archbishop, which he repeated and amplified on several occasions. After hearing him, the Archbishop, on April 1, 1889, responded: "The petitioner should humbly request forgiveness from the Archbishop and comply with his mandates; and this should be notified to the same Archbishop, so that he may, insofar as more serious reasons do not intervene, restore the petitioner to the Holy Sacrifice of the Mass, with the necessary spiritual exercises beforehand." But, after further matters were brought up by the Archbishop himself, on September 10 of the same year, it was deemed advisable to add to the response that, considering the character of the petitioner, the Prelate should grant him dispensation from the obligation of accepting the office with the care of souls. However, Priest Daniel did not agree with this at all, and he repeatedly urged that the acts that originally gave rise to the questions be reviewed in the plenary sessions of the Sacred Congregation of the Council.

A SYNOPTIC ACCOUNT OF THE DEFENSE OF PRIEST DANIEL. Priest Daniel, having presented a memorial, argued that three rights arose in his favor from the account of the facts. Namely: 1. "The right of reinstatement to the parish of Ussana through the annulment of the resignation"; Acts, Volume XXIV, page 279.

[*Latin ed. p. 162*]

162 CALARITANA 2. the right to acquire the parish of Quartucciu; 3. finally, the right to provide a Canon of Penance in the Metropolitan Church. Regarding the first point, he defends that the renunciation of the parish was conditional, either because, without the provision of a new parish, there was no reason for the abdication, or because this was done at the request of the Archbishop, in order to obtain a rescript from the Sacred Congregation. However, if it appears to have been issued absolutely and simply, it happened out of reverence and trust, with which he followed his Ordinary, who otherwise stated that he would not accept it nor obtain a rescript. Furthermore, he recounts that he had written down the formula of the renunciation, with the very words suggested by the Bishop himself, who later, of his own accord, added "that the undersigned could not have done anything good in the future in the parish of Ussana," which, if the Archbishop were to show the original document, could clearly be proven. Moreover, he states that if the renunciation had been issued simply, without any condition of promotion, the priest Daniel should have immediately bid farewell to the parish, whereas, on the contrary, the Archbishop wanted him to remain there for two months, thereby demonstrating that he consid-

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ered him to be the rector of that parish, until he acquired another. Therefore, he laments that the Archbishop never intended to grant him the parish of Quartucciu, and therefore, he claims that he was deceived by fraud, and that he did not give his free and voluntary consent to the renunciation. Furthermore, he points out that the canonical form was completely absent in this case. For, as the canonical institution of a benefice is a public and solemn act, so too, he says, must be the cession and renunciation. The renunciation of the parish of Ussana, however, was entirely private, without the intervention of a notary and witnesses, and without any archiepiscopal decree of acceptance, as would appear if the Ordinary were to present all the documents. It is also objected that the cause of the abdication was a legitimate one, namely, the enmities that the parish priest Daniel had to endure because of his ministry and the rights of the Church. For, besides the fact that he says these enmities were of little importance, if every annoyance were a canonical cause for renunciation, it would open the door for people to harass priests.

[*Latin ed. p. 163*]

GALARITANA 163 states that almost all benefits and ecclesiastical offices are subject to being renounced and relinquished, since there is no office that adversaries do not experience. Therefore, he concludes with the well-known words: "whom the wicked people hate." However, when a canonical reason for renunciation is lacking, the author demonstrates, with the authority of the Most Holy Roman Church, that there is no renunciation in Ravenna, regarding the restitution in integrum of January 30, 1846, before the Reverend Father; and in Faventina, regarding the imposition of January 24, 1845, before Muzzarelli, "the renunciation which was issued under a false premise collapsed, and especially if the corresponding [element] is lacking," and "renunciations must be strictly observed, so that it may be as little as possible that the rights of the one renouncing are harmed."

Proceeding to the second part, he attempts to demonstrate that the obligation of conferring the parish of Quartucciu upon the aforementioned priest was a debt owed to him, either by virtue of the decree of the Sacred Congregation, which he was immediately obligated to execute, or even by virtue of a made promise. Therefore, he recalls that the renunciation of the parish of Ussana was issued, so that he might obtain a better [position], and therefore, a pact existed from which the obligation arose.

Furthermore, he believes that the reasons presented are insufficient to justify the prelate's failure to execute the decree and to withdraw his given word. For if the aforementioned priest did not appear on the appointed day before the examiners to undergo the examination, it is because he was prevented from performing his parochial duties, as he indicated in a letter sent to the Archbishop on the same day. Indeed, as can be seen from the parish register of Ussana, he was obligated to pay the proper funeral expenses on

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that very day for a certain N. Bandinu.

He also argues that it cannot be maintained that the decree of the Sacred Congregation was left to the arbitrary judgment of the Ordinary; for once he had given a promise to obtain the renunciation of the previous parish, he could no longer, according to the priest Daniel, free himself from his obligation without deception. Similarly, he argues that sufficient reasons cannot be adduced regarding the enmity and protests of the inhabitants of Quartucciu. For these only began when the prelate's intention not to confer the parish upon the aforementioned priest became known.

[*Latin ed. p. 164*]

164. The matter became known to all in CALARITANA. The two reasons given by the accuser for these events are as follows. Firstly, because he recited the exorcisms for the baptism of children near the church door, as prescribed by the diocesan Synod, and secondly, because he ordered different sounds of the church bell to be rung for different funerals; which, indeed, do not seem to be blameworthy. Furthermore, it is alleged that only some of the lower classes bore a hostile attitude towards the parish priest, who could perhaps have been easily restrained, and that some of these later requested forgiveness from the priest Daniel for the injury inflicted. Proceeding to the third point, he attempts to prove that the election of a penitential canon in 1887 was openly contrary to justice and canonical sanctions. He states that the elected candidate, whom the chapter had already designated before the assembly, did not in any way fulfill the conditions required by law, nor did he satisfy the other requirements imposed by the chapter, either in the development of his thesis or in the recitation of his discourse. All of this, he says, appeared so abnormal to the Archbishop himself that, after the assembly, according to the priest Daniel, he decided to submit the entire matter to the Holy See. This, he says, is known to everyone in the city of Calari tana, and the Sacred Congregation of the Council [S. C. C.] will readily confirm it if it wishes to examine the records of the assembly, which are kept in the archives of the metropolitan church. Therefore, he believes that he was unjustly subjected to private grievances and that the election of another was completely carried out through injustice. Furthermore, the priest Daniel claims that, having suffered serious damages from the loss of the parish and suspension from divine duties, which he believes are not imputable to him, he demands compensation for all of this from the Sacred Congregation of the Council [S. C. C.].

DEFENSE OF THE ORDINARY. On the contrary, it is known that three things are required for the validity of a resignation: that it be voluntary, that it be accepted by a legitimate superior, and that it be made for a cause; Reiffenstuel, title on resignation, section 1, number 1. Certainly, in this case, the resignation of the parish was not voluntary, and the priest Daniel himself does not claim it. However, the promise of a better parish and the

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subsequent promise of the Archbishop...

[*Latin ed. p. 165*]

CALARITANA 165. The arguments presented, which might in some way diminish the validity of the resignation, offer no conclusive proof. Since there is no mention of such a condition in the resignation document, and since the one to whom the burden of proof belongs has not demonstrated it, it must be held that the resignation was sent purely and simply as a benefit. Moreover, we know that, on another occasion, he acted with a similar state of mind, as evidenced by the Archbishop's records. Furthermore, the testimony of the Ordinary cannot be opposed simply because it is in his own case; for, as Benedict XIV states in the Constitution *Cum Illud*, § 16, n. 7, it is easily believed that Bishops, so forgetful of their own, as well as the salvation of others, may be swayed by hatred or favor, and may say good is evil, evil is good, light is darkness, and darkness is light. Therefore, it seems more appropriate to apply chapter 3 concerning forced relinquishment: "We command that if it is established to you that the aforementioned, without any fear or coercion, but spontaneously, has renounced the parish in this manner, you impose perpetual silence upon him regarding this matter." Furthermore, it is clear from what the Ordinary states in his report that other requirements for the validity of the resignation were met: he states that the aforementioned was appointed to the parish of Ussana, but after a year he was required to renounce the said parish, because he was unpopular; and that he did so purely and simply, and that he accepted the resignation in the proper manner. And elsewhere, the Ordinary states: "I never thought it appropriate to say anything about the morals of Daniel; but I stated that his character had always been proud and harsh towards his parishioners; so much so that he was forced to move from parish to parish." Therefore, from what has been presented, it is clear that the acceptance of the resignation, which is asserted to have been carried out in the proper manner, occurred, and that there was a legitimate reason for the abdication, which is clearly evident in the hatred and the difficult nature of the priest Daniel towards the people. Indeed, if it is established in law that, sometimes, due to hatred and animosity of the parishioners, priests may be deprived of their office, as, among other things, the Sacred Congregation held in *Berthonen*, regarding the reinstatement in the parish on June 21, 1879, in Camherien on June 26, and in Pa-

[*Latin ed. p. 166*]

On the eleventh of September, 1880, in Padua, it is certainly not possible to deny that a just cause for resignation exists here. (1) Having considered the validity of the resignation, the Archbishop proceeds to explain the reasons for which the Reverend Daniel abstained from carrying out the decree of the Sacred Congregation concerning the appointment of a parish priest

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to Quartucciu. He writes: "Daniel, at times, so exasperated the people of Quartucciu that more than fifty individuals went to the Curia to present a protest to the Vicar General against the parish priest; and, while he was preaching, many voices of indignation were even raised in the Church. And therefore, the Bishop states, he was compelled to remove him even from that parish." Thus, since the ministry of the priest Daniel in the town of Quartucciu appeared not only to be of no benefit but also to be fraught with dangers, and in order to promote the good of that people and of himself, he considered it advisable to leave; all the more so since the execution of the decree of the Sacred Congregation had been left to the discretion of the Ordinary. Finally, with regard to the two attempts made to obtain a canonry, it should be known that, in both instances, namely in the years 1886 and 1887, the priest Daniel received only two favorable votes from the Chapter, to which the election belonged, while all the others were against him. And the Bishop considers that these matters, which Daniel himself recounts concerning the machinations of the Archbishop and the Chapter, as well as the irregularities committed during the election, should not be dismissed. I will add this one thing: although the priest Daniel may have had some right concerning this matter, it must be said that he lost it, since he did not appeal within the time established by law. For he, at the very least, was elected to the canonry after a delay of one year; whereas, on the contrary, according to the law, the time for appeal from a bad report of examiners and from an unreasonable judgment of the Bishop extends only to ten days, as expressly declared by the Sacred Congregation on November 16, 1720, and subsequently confirmed in several decisions. (1) Dertnonen, Vol. XII, 563; Camberien, Vol. XIV, 172; Padua, Vol. XIV, 292.

[*Latin ed. p. 167*]

167 GALARITANA. After these matters had been considered, the following questions were proposed for discussion: I. Whether there is a place for reintegration into the parish of Ussana, or for transfer to that of Quartucciu in this case. And II. Whether and how provision should be made for the prayers of the petitioner in this case. RESOLUTION. The Sacred Council, after deliberation on May 1, 1891, decided to respond: To I and II, negatively in all respects; and furthermore: that the priest Daniel be gravely warned about the disrespectful writing which he presented to the Holy Congregation; and that he humbly request forgiveness from his Archbishop and return to the Diocese. REGIEN. MARRIAGES. On June 27, 1891. Session 24, Chapter 1, Concerning Refusal of Marriages. Remigius, a widower from the town of Stioli in the Diocese of Regiae, having four children, on September 18 of the year 1886, after having performed the civil formalities, and having obtained a dispensation from canonical impediments, entered into marriage with Caecilia. For three months, he lived peacefully with his wife, although he was unable to fulfill the marital debt, despite frequent attempts

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made each day to do so. However, without any intervening cause, Caecilia left him twice and went to her father's house, and Remigius patiently received her back into his home once and again. In the meantime, Caecilia twice offered poison to Remigius, first on his forehead and then in his wine, and fled from the marital home to her father's house. Then Remigius firmly decided to...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 168*]

168. Having no longer been able to endure the situation, Remigius appealed to the episcopal court, requesting that the marriage he had contracted with Caecilia be declared null and void, since it was impeded by the wife's impotence. The Synodal Court, according to the consultant, decided that there was no proof of the nullity of the marriage. However, it seems to me to be the opposite. For we are dealing with an impediment of impotence, which renders a marriage null and void. The judgment of the Ordinary should have determined whether such an impediment existed in the marriage of Remigius with Caecilia. There appears to be a certain contradiction in the judgment. If the marriage is declared valid, why does it speak of the virility of the man and not of the virility of the woman? By remaining silent about the woman, it indicates a doubt as to whether she is virile or not. In the presence of doubt, it cannot be declared that the marriage was valid, but rather that there is doubt. Remigius's petition raised the question of the woman's impotence to be defined. Such a question seemed to be the object of the judgment. The judge considered appealing to the Holy See in order to obtain a dispensation in the valid marriage. But was the judge certain that the virginity of Caecilia had not been violated, when she herself completely refused to undergo an examination? In the process, neither directly nor indirectly was there any testimony regarding the woman's ability to copulate, nor was there any mention of her virginity. Indeed, as I will demonstrate in the following chapter, her impotence was concealed. What reasons could possibly support granting a dispensation, if the spouses have lived together in peace, and if never has discord stirred their souls? If the woman abandoned her husband, if she dared to offer him poison, this certainly did not arise from opposition of the character of both, but from the cunning of the woman, who was entirely intent on concealing the impediment of impotence from which she suffered. After the death of her husband, that shame would have remained entirely unknown. In the aforementioned judgment, the declaration of the man's virility causes one to doubt whether the judgment of the canonist is correct.

[*Latin ed. p. 169*]

REGIEN. "Si una mulier sit virgo. Nam cum viro suo tres menses

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commorante, videtur facilem viro petenti debitum induisse. In hac causa, opinor, inquirere debeatur quibus probationibus impedimentum impotentiae ex parte mulieris demonstrari possit. Nam ex parte viri, nullum huiusmodi impedimenti signum apparet. Quatuor filios procreavit; medicorum inspectioni subiectus, inventus est potens ad quamvis mulierem accedendi. Probationes autem, ad explorandum impedimentum impotentiae, juxta canones, confessio sponsorum iurata cum testimoniis septimae manus requiritur ad concludendum, *Laudabilem*, cap. V. Addunt canonistae, et *praxis est S. O. C.* inspectionem corporis a medicis perficiendam. Juxta canones etiam triennalis cohabitatio exigitur ad experimentum. Schmalzgrueber, Tom. IV, p. 3, tit. XV; Sánchez, *De matr. P i chler. Ius. can. lib. IV*, et alii. In hoc casu, mulier omnino respuit inspectionem. Nec suasionibus parochi, nec Vicarii exhortationibus, nec parentum precibus indulsit, ut matrona eam inspiceret; immo, pluries ait: "Me necabo si cogar ad hoc experimentum." Impossibile videtur experimentum triennalis cohabitationis; nec mulier hoc patitur, nec viro convenit. Ipsa bis e domo viri fugit, nec viri faciem aspicere audet; vir cohabitando cum muliere uxore sua in periculo mortis esset, quia bis ipsi venenatum vinum, et pulmenta venenata praebuit. Verum, corporum inspectioni aliquando Sacra ista Congregatio gravibus rationibus dispensando supplevit, exigendo alia remedia; et in casu sufficere potest inspectio facta viri, ut deducatur, morali certitudine, mulieris impotentia. Cohabitationis triennalis experimentum, juxta caput *Laudabilem*, requiritur quando impotentia aliter probari nequit. Ait enim Celestinus III in citato capite V: "Requisisti quantum tempus indulgendum sit naturaliter frigidis ad experientiam copulae nuptialis. Nos vero praesenti consultatione sentimus, ut a tempore celebrati coniugii si frigiditas probari prius non posset, cohabitent per triennium." Sed in casu in prom-"

[*Latin ed. p. 170*]

170. REGULATION. These are supplementary proofs which, according to the cited canon, are sufficient to conclude. Pope Celestine III states: "However, if both declare, with the seventh witness of relatives, or of neighbors of good reputation, if relatives are lacking, having performed the sacred rites of the Gospel, and each swears that they have never been united in carnal union, then it seems that the woman is able to enter into a second marriage." The most complete moral certainty is acquired from voluntary confessions, especially if they contradict the one confessing, as is the case here, and from the sincere testimonies of witnesses. Not only does impotence on the part of the man render marriage null, but also on the part of the woman; Pope Lucius III defined this: "In response to your consultation, in which you asked whether women who are closed [i.e., virgins] and are impotent can enter into marriage with men, and if they do enter into marriage, whether they should be dismissed, we respond that,

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although it may seem incredible that anyone would enter into marriage under such circumstances, the Church of Rome has customarily, in similar cases, allowed them to live together as if they were wives, although they cannot truly be wives." From this text, it is deduced that the impediment is the woman's impotence, and it is evident in those words: "they cannot have them as wives." For the end of marriage is not achieved. As for cohabitation, the use of this canon is not permitted by new law. Pope Sixtus V sent a brief letter to the Bishop of Novara on June 27, 1587, in which he forbade such cohabitation. We must investigate whether Cecilia was truly impotent. Impotence, says the holy Doctor Alphonsus de Liguori, is "that condition by which spouses cannot have intercourse suitable for procreation. Just as marriage is valid between those who can have intercourse, even if, by accident, they cannot generate, because they are sterile or old, or because the woman does not retain the seed, so there is no marriage between those who cannot consummate that act by which generation would be possible from themselves." Therefore, who can accuse a marriage with an impediment of impotence?

[*Latin ed. p. 171*]

REGISTRUM. 171. "Est-ce un cas de nullité?" Seuls les conjoints, comme le dit Reiffenstuel, Tome VI, titre XVIII; car cela ne concerne que eux. Du procès, nous apprenons que la première à avoir révélé cet obstacle était Cécile, bien qu'elle ait attribué l'impuissance à son mari. Cécile était toujours de bonne humeur et d'une intelligence suffisante, comme l'attestent les témoins. Cécile connaissait son défaut, c'est pourquoi elle repoussait les amants. Le curé a témoigné que Cécile était triste et affligée lorsqu'elle a été invitée au mariage, et qu'elle a accompli les rites ordinaires du mariage en pleurant. Ceci conduit à la question du Conseiller. Pourquoi repoussait-elle les amants? Pourquoi était-elle triste lors de la célébration du mariage? Pourquoi pleurait-elle en accomplissant les rites ordinaires du mariage? Elle n'a pas été forcée à se marier avec Remigius. Elle était de bonne humeur; elle n'avait aucune raison de repousser le mariage avec Remigius; elle craignait que son impuissance ne soit rendue publique, ce que les femmes considèrent comme une honte. C'est pourquoi elle s'est enfuie deux fois de la maison de son mari, comme tous les témoins l'ont attesté au procès. C'est pourquoi elle a cherché la mort de son mari. Tous les témoins attestent qu'elle n'a subi aucune pression de la part de son mari, alors pourquoi cherchait-elle la mort de son mari? C'était afin que la connaissance de son impuissance demeure cachée. C'est pour cette raison qu'elle repoussait avec tant de véhémence l'examen des médecins, et de toutes les femmes. Mais cette femme intelligente avouait son obstacle; mais elle l'attribuait à son mari, comme tous les témoins l'ont affirmé, en particulier le curé lui-même. Mais il faut noter la confession des futurs époux devant le juge ordinaire: il faut d'abord considérer que Remigius a

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prêté serment avec empressement, affirmant ce qui est vrai. En revanche, la femme invitée à prêter serment a juré sans hésitation, et avec une répugnance non négligeable. En effet, interrogés sur cette répugnance, tous les témoins ont répondu à l'unanimité: "Nous ignorons la raison de ce fait." Le fiancé a déclaré qu'il était capable de la copulation, il a raconté les crimes commis par sa femme en lui administrant du poison, et lorsqu'on lui a demandé s'il y avait des difficultés dans les rapports sexuels, il a répondu: "La taille de la femme rendait la communion maritale impossible."

[*Latin ed. p. 172*]

172. REGIEN. Caecilia, quae, non sine haesitatione et repugnantia, iuravit, quamquam, nonobstante sua calliditate, qua defectum suum celavit, se ipsam manifestavit impotentem. Si vir suus cum vidua, sicut ipsa, copulam perfectam et completam habere poterat, impotens non erat. Ex parte sua erat impedimentum, sicut Remigius illud descripsit, scilicet quod ossa pudenda unita erant ita, ut impossibilem facerent coitum. Ipsa enim ait quod Remigius cum virginibus coire nequit, sed cum viduis et defloratis. Fatetur sanguinis effusionem in minima quantitate non derivasse ex violato virginitatis velamine, sed a conatibus viri. Ergo tam arcta erat pars, ut, nonobstantibus conatibus, copula haberi nequiverit. Insuper, frequentes congressus nec minimam viam aperire poterant viro coeundi. In hoc quidem consistit impedimentum impotentiae ex parte mulieris, ut supra adnotavi, auctoritatem referens divi Alphonsi de Ligorio, Ecclesiae doctoris. Fassa est potentiam viri, quia impos conatus non agit. Ipsa fatetur quod vir suus, cum accedebat, videbatur energia pollere, sed postea cessabat, hoc certo accidebat eo quod inter crura semen effundebat. Ipsa fatebatur impedimentum quo laborabat esse absolutum. Remigius uxorem suam pro certo habebat esse impotentem. Mulier vero, requisita, et admonita pluries ut iuraret de veritate dicta, constanter renuit. Interrogationibus tam Iudicis Ordinarii, quam defensoris vinculi respondentes, sub iuramenti sanctitate, medici unanimiter responderunt, Remigium nullo impotentiae signo laborare; et effusio sanguinis a muliere non indicat matrimonii consummationem. His ergo testimoniis auditis, quidne concludendum videtur? Certe, Remigium potentem esse ad consummationem matrimonii. Ex altera vero medicorum declaratione, deducitur quod, cum nullus defectus inveniatur in Remigio, unde etiam probabiliter suspicari fas sit, illum impotentia laborare, ac proinde aptus sit ad copulam generativam.

[*Latin ed. p. 173*]

REG. 173. This woman is afflicted with a defect of potency; hence, either she lacks a vulva, or the vaginal canal is obliterated. But these suppositions are realities in the case of Cecilia, as Remigius examined this defect and described it before the Ecclesiastical Judge, albeit in a simple and unre-

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fined manner. However, according to the opinion of physicians, such a defect is incurable, and therefore constitutes a perpetual impediment to marriage. Furthermore, the woman confessed that the flow of blood was nothing other than the effect of male potency, when she said: "The smallest flow of blood was the result of the man's efforts." Therefore, resistance to the man's efforts was caused by a deficiency in the vaginal canal or its obliteration, or by the absence of a vulva, which constitutes absolute impotence. Nevertheless, in order that the truth might be more clearly established, the same doctors were examined separately. They were asked whether Remigius was fit for intercourse, both with a deflowered woman and with a virgin, and they replied that he was perfectly fit. Furthermore, they declared that the integrity of Cecilia alone could not present an obstacle on the part of Remigius, considering his strength. If marital intercourse was not effected, this must be attributed to the impediment of an external and superior condition. Drops of blood from the side of Cecilia could have flowed due to a partial or total entry on the part of the man into the vagina; but this could have happened without any entry or injury to the hymen, or from an abrasion of the mucous membrane or a laceration of a part. From what has been said, it is deduced that the marriage between Remigius and Cecilia was not consummated, because it could not be consummated by that act by which generation is naturally possible. In the case under consideration, both Remigius and Cecilia confessed that there is an impediment to intercourse because the woman's vessel is completely closed. Remigius believes that no man can have intercourse with Cecilia; Cecilia, on the other hand, says that Remigius can have intercourse with widows and deflowered women, but not with virgins. On the part of Remigius, the impotence is absolute; on the part of Cecilia, it is relative. In any case, it is certain that there was no marriage in this case. It seems more probable that they believe...

[*Latin ed. p. 174*]

174. The physicians examined the matter and confirmed that there is a perpetual impediment on the part of Cecilia. They presented the principal causes of the impotence, of which they named three as absolute, and for which any remedy is futile. They added a fourth, namely, the constriction of the female organs, and stated that it could be cured with great difficulty, which is equivalent to a perpetual impediment; for, as doctors commonly teach, as Sánchez states in Book 7, chapter 95, and the Salmaticenses in their work *De Matrimonio*, a woman can be subjected to an incision even with great pain, but not with danger of death, nor under the threat of a serious illness. Not only the physicians present in this process, but almost all the most skilled writers in the art of medicine, as can be read in the medical dictionary, consider the incision of the female organs to be very dangerous. This danger of death is present, and it is always rejected by the will of the

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patient; therefore, it is considered a perpetual impediment. Therefore, if there is an impediment to consummation on the part of Cecilia, either absolutely, or conditionally, namely, through an incision that carries the risk of death, or at least a serious illness; and if Cecilia detests the examination, and even more so the incision which threatens death or a serious illness, and will never allow such a remedy to be applied to her, then the impotence with which she suffers must be considered perpetual. However, even if the impotence on the part of the woman were relative, or if the woman were incised with danger of death, and the incision were performed properly, the marriage is not valid; because that which is invalid from the beginning is always invalid. Sánchez holds this opinion with many canonists, as stated in Book 7, chapter 95. Finally, to further clarify the difficulty of the effusion of blood, which the defender of the marriage bond has used, suspecting that the semen has penetrated through some hidden vessel, and thus the marriage has been consummated, I say that there is only one natural vessel in a woman. According to Sánchez in Book 2, chapter 21, the marriage is not consummated if the husband penetrates the woman's vessel without effusing any semen within the vessel. But it is necessarily required that the male semen enter the woman's vessel; because the carnal union, through which the marriage is consummated, is...

[*Latin ed. p. 175*]

"Regarding the matter in question, it is understood that spouses are made one flesh. The husband did not deposit his seed within the wife's womb, neither in the initial union nor in subsequent unions. Even if it were true that the husband attempted penetration of the wife's womb, which is entirely false, it is certain that no seed was deposited within the womb, but rather the opposite. Nor is it permissible to assume that the seed entered the womb through other means, because it is not certain that the husband sowed; indeed, the opposite is affirmed by the testimonies of the spouses. Easily moved by the lamentations of Cecilia, and by her sufferings, the husband did not sow. This is natural, and always happens, and should be considered certain. If, in obscure matters, that which appears most likely is to be decided, in this question, not that which is likely, but that which appears most probable, and perhaps morally certain, should be held. The marriage of Remigius with Cecilia was entirely free from any impediment of impotence. THE OPINION OF THE THEOLOGIAN. Here, there are two questions to be resolved, he said: 1. Whether the marriage is null and void due to the impediment of impotence. 2. Whether, given that impotence is not evident, one should consult with the Holy Father, so that a dispensation may be granted for a marriage that is only valid in appearance. Impotence, or the inability to procreate, dissolves a marriage by natural law, because the purpose of marriage is the procreation of children; therefore, someone who is unfit for this purpose, either by a bodily defect or for some other rea-

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son, cannot and should not enter into marriage, and if he does, the marriage is invalid, whether the inability arises from the husband's side or the wife's side; and in this matter, all agree, both Doctors of Theology, Canonists, and Jurists. Indeed, impotence in the husband can arise from frigidity, or from weakness of the organs; in the wife, it usually arises from the narrowness of the womb, which prevents the husband's entry and the reception of the seed. Impotence is either absolute, or relative; either perpetual, or temporary; either certain, or doubtful, etc. What kind of impotence exists between these spouses is what we must investigate; and if true impotence is established, the marriage will be considered entirely null and void."

[*Latin ed. p. 176*]

176. REGISTRUM. Remigius, in suo iuramento, testificò con fermezza di essere capace, non solo perché dalla sua prima unione aveva avuto molti figli, ma anche perché i medici più esperti avevano attestato la sua perfetta costituzione fisica; tuttavia, confessò che Cecilia, nonostante ripetuti tentativi, non era mai riuscita a completare l'atto coniugale, a causa dell'insormontabile stretta del suo corpo. Al contrario, Cecilia testimoniò di aver sperimentato più volte la vita matrimoniale; ma, disse, Remigius era inadatto a tale compito. Cosa si deve concludere da queste affermazioni, quando entrambi affermano che l'atto coniugale, nonostante i ripetuti tentativi, non è mai stato compiuto a causa dell'impotenza? Da quale parte risiede il difetto? La donna accusa l'uomo, l'uomo accusa la donna dello stesso difetto: a chi dobbiamo credere? Quando entrambi testimoniano cose opposte, regolarmente non provano nulla. Tuttavia, insegna Sánchez, nel libro VII, nella disputa 109, che nel caso in cui uno nega e l'altro coniuge afferma, è necessario ricorrere all'esame del corpo, ma questo non può essere ottenuto in questo momento. Se la donna avesse acconsentito all'esame, la questione sarebbe stata risolta; ma Cecilia, con ostinazione, si è rifiutata e continua a rifiutarsi. Pertanto, il difensore del matrimonio conclude che non si può provare l'impotenza; e, a causa delle gocce di sangue che sono state versate durante il primo rapporto, dimostra la consumazione del matrimonio, e quindi dichiara con certezza che Remigius è stato certamente sano. Tuttavia, a questo giudizio si oppose l'avvocato di Remigius, che cercò di confutare gli argomenti presentati dall'avversario. Ma, a prescindere da ciò che questi, per quanto eruditi, abbiano detto, finora abbiamo solo la confessione dei coniugi, che, come saggiamente osserva il signor Mansella, o la narrazione dei fatti successiva alla celebrazione del matrimonio, e ottenuta in contrasto con il suo valore intrinseco, non hanno immediatamente valore probatorio, anzi, da sola e per sé stessa, è priva di ogni forza. Pertanto, per accertare la verità in una questione così grave, quando si tratta del valore del Sacramento, è necessario ricorrere a prove supplementari. Perciò, il giudice delegato, con prudenza, posto in questa situazione, ordinò che fossero interrogati, con

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perizia legale, esperti di medicina, per conoscere le condizioni fisiche dei corpi, e ordinò inoltre che fossero convocati.

[*Latin ed. p. 177*]

REGIEN. There were 177 witnesses on each side. Therefore, three doctors were appointed for a legal examination. Remigius himself, without contradiction, submitted to the examination of his body, so that, according to the judgment of the doctors, who testified separately and then cumulatively under oath, he was found to be fit for intercourse with any woman who is not naturally imperfect. It is not to be said of Cecilia that she opposed the examination; therefore, the doctors, although they may see drops of blood flowing from the effort of the man exerting his force, grant that this does not constitute an impediment to intercourse, but they assert this with some doubt, since it is unknown to them whether the female organs are imperfect or not. However, the defender of the Sacrament maintains that, given the man's potency, the doctors' judgment regarding the blood is ambiguous, and that Cecilia is of a dull mind, who either does not understand the act of marriage, or responds vaguely and excessively modestly. Therefore, he insists that in order to determine nullity, it must clearly be established that there is impotence; in particular, he judges that the consummation, although imperfect, but still sufficient for penetration, has been accomplished through the drops of blood, and finally, he demands that a three-year trial period be prescribed to them according to the Canons. His observations are worthy of consideration; however, Remigius's advocate attempted to reject and refute them. He argues that Cecilia is not of a dull mind, but is rather modest, and therefore deserves to be believed, since she confesses to the lack of consummation; he declares that a three-year trial period is impossible due to the repugnance of the parties, and that it should even be prohibited, since, as he believes, there is a true moral impotence present. Cf. Mansella, *Excogitationes*, and others, Disputation III. In order that a judgment not alien from truth may be rendered in this matter, or doubt, the foundations which we have in the records must be considered: but the entire question rests on the confession of the spouses, who, without contradiction, but concordantly, swear that they are impotent for intercourse, and that they have unsuccessfully attempted it, although the husband may feign intercourse, and the wife may feign pregnancy; therefore, the records state, it is not to be rashly maintained or believed that impotence exists between them, Acta, Vol. XXIV, p. COLXXJX, 12.

[*Latin ed. p. 178*]

178. REGULATION. We can, whether it be an absolute or a relative impediment. Do both lie? Or is collusion to be presumed? No one of the witnesses spoke of falsehood or collusion; indeed, they declared them to be honest and truthful. Remigius de' Medici was legally examined without

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any defect, and was found to be robust and perfectly capable of consummating a marriage; he is already the father of children from a previous marriage, so nothing more can be desired of him in this respect: the man certainly is not new to marriage; moreover, he testified under oath that he found the woman's height to be an insurmountable obstacle, and that he attempted the act of consummation without success. Shall we say that he lied? Prudent reason does not permit this: for, besides the physically reasonable explanations, we have other proofs in favor of Remigius. All testify to his integrity, honesty, and truthfulness; of the many witnesses called to testify judicially, none doubted his integrity and honesty, especially his parish priest; then, all with one voice commend his way of life. His assertion regarding the lack of consummation of the marriage is manifestly corroborated: the man never mistreated her, but rather, although he claims that she poisoned him with something in his food, he twice received her as a runaway in his house. All of this strongly favors Remigius. As for Cecilia, although she is called by the witnesses to be honest, religious, and free from any illicit love, she is presented as a woman of a frivolous nature, ignorant, and of little intelligence, almost simple. When asked whether she had perfectly consummated the marriage, she replied that she had not, even once: she openly and without shame spoke of Remigius's impotence; however, she also stated publicly that she did not know from which side the defect existed. In the first examination, when asked if she would enter into another marriage after the death of her husband, she answered affirmatively, but in a private conversation, she always said that she would reject new marriages. But whatever may be the case, we can reasonably judge of her impotence, since it agrees with Remigius's testimony. Furthermore, the voice of the people, or public opinion, agrees with...

[*Latin ed. p. 179*]

REGIEN. 179. The witnesses and nearly all the inhabitants affirm that they believe, and that there exists, on the part of Cecilia, an impediment. But if one can rightly doubt the validity because of the woman's impediment, it cannot be said the same of the lack of consummation, concerning which sufficient arguments are presented by a virtuous, honest man, incapable of perjury, whose assertions are concordantly and clearly confirmed by the very words of the woman herself, as is sufficiently evident from the statements of both under oath. The objection is raised: that the confession of the spouses alone is not sufficient to prove [the lack of consummation]; but I reply that the sworn admission is accepted as testimonial evidence, and sometimes as true, as the testimonies of witnesses confirm and strengthen. With these things noted, let us concede that the marriage of the spouses was validly contracted, and that the nullity has not been sufficiently proven by the lack of inspection, but that it should be considered valid, since we have, if not evident proof, at least moral certainty concerning the lack of

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consummation, and we gather sufficiently from the statements that this is the case. Therefore, Remigius's advocate, leaving aside the former question, requests that the Most Holy Father be consulted regarding a dispensation from the marriage, which is valid but not consummated. Grave, just, and reasonable reasons do not seem to be lacking in this matter. Firstly, considering the character of Cecilia, any reconciliation is impossible, and it would be pointless to discuss composing the minds of the parties; much less is to be hoped for an inspection of the female body, which Cecilia obstinately refuses, in which, however, an impediment is sufficiently and even certainly presumed. Furthermore, the three-year period is no longer imposed by the Apostolic See.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, *ex officio*. In the year 1886, in the month of September, on the 18th day, Remigius, being 36 years of age, a widower with four children, entered into marriage with Cecilia, who was 35 years old, and with whom he shared a common table and bed for two and a half months. But on February 21, 1887, after Cecilia...

[*Latin ed. p. 180*]

180. To that man, having returned to his paternal home, Remigius declared his wife to be unfit for marriage, and demanded that the marriage be annulled by the ecclesiastical court; which did not declare it null, but imperfect. A theological consultant in the ecclesiastical court held this opinion, while a canonist considered the marriage to be invalid. As I shall begin with the most learned canonist, he searches everywhere, on land and sea, but in vain. For the indications which he gathers with the utmost care are very slight, and those conjectures which he readily draws from them can easily be refuted. Here it will suffice to remember that certain arguments are required to establish the asserted unfitness of Cecilia. But the matter lacks any testimony from experts; nor are there witnesses, even of the seventh hand, who have observed this defect in Cecilia, either from near or far. It is indeed a new thing to declare a marriage invalid based solely on the faith of one witness asserting that the woman is so tight that no man can enter her. Moreover, the song recited by Remigius, if I am not mistaken, contradicts the decisive fact, not only as narrated by Cecilia, but also as narrated by Remigius himself. Furthermore, Cecilia, when questioned by the judge: "Have you suffered any harm in the use of marriage with Remigius?" replied: "At first, I was greatly distressed, so that a drop of blood flowed." Afterwards, indeed, on subsequent occasions, all pain ceased; which Remigius also confirmed. All of this is perfectly consistent with virgins who are very suitable for intercourse; who, at first, admit a man without pain, but with the shedding of blood; but after the virginal seal is broken, they do not shed blood on subsequent occasions, nor are they tormented. On the contrary, tight girls experience even more severe

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torments, because their bones do not yield or expand, but the parts of the woman's genitals are damaged, harassed, and irritated by the violent entry. The aforementioned facts, not only demonstrate that Cecilia is suitable for the marital act, but also that the marriage has been consummated.

[*Latin ed. p. 181*]

REGIEN. 181 dit. Neither do the medical witnesses move me; for they only hold that the consummation of marriage is impossible, notwithstanding the aforementioned emission of blood; but this must be certain and established. Furthermore, the doctors were ignorant of a matter necessary for the judgment of the case, namely, that Cecilia, having lost blood, endured the man, as we have seen, without pain. With these premises, two hypotheses were to be examined: I. Whether there exists a nullity of marriage in this case. And in the negative. II. Whether it is necessary to consult the Most Holy Congregation regarding a dispensation for a marriage that is valid but not consummated in this case. RESOLUTION. The Holy Congregation, after discussion on June 27, 1891, decided to respond: To I, it will be provided in the second [section]. To II, affirmatively, *it is forbidden for the woman to enter into new marriages* without the consultation of the Holy Congregation.

FROM MACERATA. PAROCHIAL CONGREGATION. On June 27, 1891. Session 24, chapter 18, concerning the reform of the care of souls, which habitually pertains to the Cathedral chapter of Macerata, formerly two canons were appointed alternately for single years to exercise this office. This custom persisted constantly until the year 1818, when, in order to better provide for the administration of the parish, the Very Reverend Chapter, urged by the necessity of the matter, by Apostolic Letters dated July 8 of the same year, decreed the establishment of a permanent vicariate there. It was desired that the vicar should be a curate, as are other parish priests, chosen by election, and that he should be charged with both the care of souls and the canonical duties, and therefore, he should be a canon.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 182*]

182 MACERATA. Then, [certain properties] were inseparably united [with the benefice], and their fruits, whether derived from a particular endowment or from the common fund, were assigned as a suitable provision for the parish priest. After, in our times, civil authority violently interfered in ecclesiastical affairs, even the properties of the Chapter of Macerata were subjected to the law of confiscation, as they say, without exception. But since the law did not affect the provisions for the parish priests, the parish priest, John Pagamici, brought the public treasury into court and obtained a judgment from the civil court, by which both the small

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particular endowment and the part of the common fund corresponding to his canonry were declared exempt from confiscation. A portion of these properties, he, who had incurred the greater expenses in bringing the lawsuit, was able to enjoy, with the consent of the canons, until the final day. However, in the year 1886, before the canons were to designate a successor to Pagamici, the Chapter insisted that the new parish priest should, according to the form of the Instruction of the Sacred Congregation of the Council, "Ad dirimendas," dated February 22, 1876, reintroduce the restored properties into the common fund, from which he would thenceforth receive his provision. Therefore, the Bishop was requested to examine and settle the entire matter, according to the procedures of the aforementioned Instruction. The Bishop, to whom the church of Macerata then belonged, gladly accepted the petition of the Chapter, and on July 19, 1886, he made known his opinion, reading a decree which was approved by all the canons, except one. Therefore, on the 21st of the same month, he issued a decree: 1. That the properties constituting the endowment of the parish priest, except for his particular endowment, should devolve to the common fund, to be administered by the Chapter. 2. It is the right of the parish priest to receive from the Chapter a sum equal to that declared for the manorial tax, without deduction of the tax of 30 [0] which the other canons pay. To the extent that the properties assigned to the parish priest, which are to be returned to the common fund, exceed the sum received by the parish priest, he will not have the right to auction off his share for this reason; but this excess must be distributed among the other canons, until the damage suffered is made good.

[*Latin ed. p. 183*]

MAGERATEN. 183, concerning a tax of 40 OnO. 3. Since in the past he received an equal share of the canonical income and bore an equal share of the expenses and burdens of the Mass, so today he must contribute, taking into account the difference that exists between the share he receives and that which is received by the other canons. For the expenses of the cult which burden the chapter, he will contribute as do the other canons... In accordance with this, those who, having given their names to the list of contributors before being admitted to the office, promised to observe the aforementioned decree before the Ordinary and the examiners. Having had this experience, the priest Aloysius Monachesi deserved the prebend, and for this reason he was chosen and obtained possession of the perpetual vicariate. To this chapter, to which, as I said, the administration of goods had been entrusted by the Bishop, a sum of 1500 livres was assigned, from which, however, the burdens indicated in article 3 of the episcopal decree must be deducted annually. These burdens, concerning which the present controversy arises, it is fitting to transcribe from the attached vote of the Bishop, so that they may be better understood. The reason is that the rev-

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enues of the perpetual vicariate, which are exempt only from the tax of 30 OnO, must contribute with the revenues of the other canons in proportion, both with regard to all taxes, and with regard to any increase in them, and with regard to any new taxes that may be imposed... He must contribute to the expenses both for administration and for those which the Chapter must undertake for the Church. However, the priest Monachesi discovered that the accepted conditions were too burdensome, and for this reason he presented petitions to the S. C. C., imploring that it would deign to grant him an exemption from the tax commonly levied on movable property, to be paid by the chapter. A Synopsis of the Dispute: DEFENSE OF THE VICAR. In order that the resolution of this matter may be more easily achieved, let us first recall the response to the seventh doubt.

[*Latin ed. p. 184*]

184. In deliberatione Congregationis Sacrorum Consiliorum, diei 22 Februarii 1877, postquam statutum est ut bona massae communis a parocho accepta, sub titulo congruae cum aliis capitularibus, considerentur, additum est: « Ut ex communi massa parocho solvatur annua portio haud minor ea quantitate, quam ante bonorum direptionem percepiebat. » Verum est, si haec quota vectigalibus in dies gravioribus subiiciatur, profecto non nisi verbis summa prius percepta vicario curato salva erit, quod num decreti sensui consonum sit, declarandum ab Eminentissimis Patribus. Quod vero attinet taxam divitiorum mobilium, videtur ratio, ut ea a parochiali congrua penitus excludatur. Memoratur enim huiusmodi taxam impositam fuisse reditibus chirographariis vel in publici, ut aiunt, debitis nominibus constitutis: ab ea tamen bona immobilia minime gravari. In causa vero cum congrua parochialis in parte bonorum immobilium a fisco restituta sit, haud obnoxia fuit illi taxae, cui reliqui capituli reditus post conversionem suppositi fuerunt. Non igitur vicario curato aequum apparet, et ea taxa quae minime pro parochiali beneficio persoluta fuit, a sua congrua modo detrahatur. Quod si ex decreto Sacrorum Ordinum parochus ea omnia quae a fisco recepit in massam conferre debet, et lucrum, si quod fuit, cum canonicis dividere, non exinde sequi putat se ad iacturas ceteris illatas viritim obstringi. Quod magis magisque tenendum forsan est, si attendatur id quod in Episcopi voto, decreto adnexo legitur, quoad taxam trigesimi pro centenis: taxa 30 per centum lata fuit in beneficia choralia, parcendo beneficiis. Qua de re, ceu quaelibet praebenda taxam rependit, qua oneratur, sic iustum videtur praebendam Vicariae curatae immunem abire. Si igitur parochialis congrua a taxa trigesimi pro centenis immunis declaratur, eo quia huiusmodi onus bonis parochialibus non fuit impositum, iisdem prorsus rationum momentis et a taxa divitiorum mobilium libera esse deberet, ad tritum effatum: « ubi eadem est ratio,

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eadem debet esse iuris dispositio. »

[*Latin ed. p. 185*]

Macerata, 185. Furthermore, it must be added that the proper amount for the parish, established by the chapter according to the form of the episcopal decree in book 1, amounts to 1,500, which, according to the vicarius, is considerably less than the revenues derived from goods restored by the treasury, and therefore also less than what the parish priest previously enjoyed before the confiscation of the goods. It is reported that, when the matter of the conversion of land by the government was being discussed, the canons declared that the common mass yielded only a small amount, namely 1,590 livres annually for each canon, while, on the contrary, it used to exceed 2,200 livres. Given that one-twelfth of the value of the immovable property has been assigned by the treasury for the parish, and that the annual proceeds of this amount can be calculated at 2,200 livres, it would be evident that the actual amount is far from being equal to the previous proper amount, and therefore, whether by law or at least by equity, the tax in question should not be deducted from the settlement. Moreover, the priest of Monachesi S. C. C. sent a demonstrative example of the revenues of the parish proper amount, from which it is inferred that it is not such an amount as would allow the parish priest to live comfortably. Indeed, from the attached scheme, the revenues, both from the common mass and from the particular offerings, do not exceed 1,828 livres annually, and if one deducts the various burdens and expenses specifically listed, barely 1,248 livres will remain for the vicarius curato, which, he says, is scarcely enough to support him in the city of Macerata, especially since he does not have a house for the parish to live in, nor does he receive any other emoluments due to the chapter. It is indeed certain that the parish proper amount should be such as to provide the priest with what is necessary for life, those who minister to the spiritual needs of the people. Nor does it matter if the amount exceeds one hundred scudi assigned in the deed; for it is commonly accepted that the aforementioned amount should be taken not as a fixed sum, but as a demonstrative sum, so that rather, it should be determined in such an amount as the judge considers sufficient, taking into account the place, the burdens, the quality of the person, the customs of the region, and similar factors, as held by the Holy Congregation in Fermo.

[*Latin ed. p. 186*]

186. MATTERS OF IMPORTANCE. Regarding the pension of March 17, 1827, in Porto. Concerning the parochial rights of August 27, 1853, etc. However, it is not fitting for the vicar to claim that he did not fulfill the obligation he undertook, having given his consent in writing to the Bishop's decree, without any exception, before the meeting. For, besides the fact that he states that he signed documents in which he lacked full freedom

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and knowledge of the facts, he asserts that he could not have undertaken the obligation beyond the limits of the law and with a violation of parochial rights. Therefore, he could rightly invoke Rule 64 of the law in UT, which states: "Those things which are done against the law ought to be considered as null and void." Indeed, it appears that the decree was not properly enacted, either because it was issued after only hearing the chapter, and without the proper protection of parochial rights when the parish was vacant, or because it exceeded the ordinary limits of the Bishop's power. For it involves the imposition of a new burden and a consequent diminution of revenues, which, according to the sacred canons, is disapproved of in the case of the provision of benefices, as stated in title XII, book Decret.: and the Holy Congregation of the Council has frequently declared that such burdens cannot be imposed by the authority of the Ordinary, as testified by Fagnano in chapter Significatum de praeb. n. 3 and following. It should not be said, as the chapter maintains, that this was demanded of the Bishops by virtue of the Instructions of the Holy Congregation "Ad dirimendas." For it is written there: "However, in practice, the Bishop must take care to settle the matter; otherwise, he should appeal to the Holy Congregation"; these words not only do not grant the Bishop the authority to decide, but, since they speak of settling the matter and require an appeal to the Holy Congregation, they seem rather to exclude it. However, on the other hand, the chapter, defending the Bishop's decree in all respects, denies that the vicar has the right to object to the obligation he has accepted. Indeed, nothing is more consistent with right reason and with both laws than that pacts and agreements, and the obligations derived from them, should be religiously observed. This is clear from I. Sicut. 5 c. De oblig, et act. and I. 1 in princ.

DEFENSE OF THE CHAPTER.

[*Latin ed. p. 187*]

MAGERATEN. 187 ff. concerning Patti, and from I. 75 ff. concerning various rules of ancient law. "No one can change his decision to the detriment of another." These words are in harmony with many provisions of canon law, and most clearly with Rule XXI of the law, which states: "That which has once been decided cannot subsequently be disapproved." Therefore, if the priest of Monachesi had already accepted the Bishop's decree with his signature and had obligated himself to observe it in every respect, without exception, then the present controversy could be completely resolved. The chapter believes that the lack of freedom is in no way a valid reason for the perpetual vicar, whether because the assertion is gratuitous and devoid of any probable argument, or because the signature was affixed without hesitation to the decree, the force of which only began to be weakened after some time. Nor is another exception, namely ignorance of the assumed obligation, a valid one, since it is through this that full knowledge of the matter

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is prevented. Furthermore, expounding the intrinsic merit of the matter, the chapter defends the episcopal decree of July 21, 1886, which is firmly based on the principles of law and equity, and therefore must exert its force in all respects. In addition, it recalls that the Holy Office has entrusted the Bishops with the practical execution of appropriate measures for the parishes, according to the Instruction "Ad dirimendas," which in itself has led them to be arbiters in such controversies. Following the example of the superiors, the perpetual vicar of Pagamici, upon his death, presented the entire matter to the Ordinary, declaring himself ready to accept any decision. The matter was not brought before the Bishop and the canons in vain, nor were the rights of the parish neglected. There was someone who stubbornly maintained them, and, opening his mind to the written vow, refused to allow the parish property to be placed in a common fund. Moreover, the Bishop, from the very beginning of the decree, declared: "Since, on the one hand, the rights of the Chapter must be preserved, and, on the other hand, the rights of the vicar must not be harmed, we have decided and decreed..."

[*Latin ed. p. 188*]

188 MACERATA. Quare, statuo quod Episcopus, cum legem in tali casu ferens, potestatem suam non excedit, capitulum affirmans decretum Sacrae Congregationis Instructioni plane congruere. Nam, ibi praecise statutum est, ut bonis paroecialibus in communem massam immissis, annua portio vicario perpetuo persolveretur haud minor ea quantitate quam ante direptionem bonorum perceperat. Onera si qua iam parochialem imminuebant vel in posterum imminuerent, aequum esse edicunt pro parte parocho attribuere, ut aequalitas participantium ad communem massam, iuxta consuetudinem Capituli maceratensis et mentem Sacrae Congregationis, plene servaretur. Cum vero post collationem bonorum paroecialium ex his simul aliisque reditibus capitularibus massa coalescat, capitulum tuetur vectigalia ex integro communi patrimonio esse detrahenda, ita ut viritim ab unoquoque onus sustineatur. Parochus ideo, scribit Capitulum, ex dote devoluta ad massam, percipere nequit nisi duodecimam partem; eo quod complementum habere debeat a massa communi per caespites oneratos taxa *di ricchezza mobile*: et proinde hoc complementum pro sua entitate subiectum eidem taxae. Aliter enim massa communis, cum aliorum canonicorum detrimento consulere deberet huic taxae pro parocho, qui reditus percepit, et eo magis si taxa augeatur. Praeterea bona immobilia devoluta massae communi possunt minores redditus dare ex augmenti taxarum praedialium, ex diminutione pretii messium aut ex infortuniis. Qua de re si redditus ipsorum bonorum minores fierint, quota parocho debita, parochus tutam haberet suam quotam, dum massa communis seu alii undecim canonici pati deberent diminutionem. Quae profecto rationum momenta, ut ex voto eruitur, Episcopum moverunt ut parochi congruam

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ab oneribus et nominatim a taxa *di ricchezza mobile* haud immunem declararet. Nec urgeri posset, iuxta capitulum, comparatio quam vicarius perpetuus desumere vellet a taxa trigesimi pro centenis. Nam haec sortem et minime annuos fructus attingit.

[*Latin ed. p. 189*]

CHAPTER. 189 and therefore it has been ascertained that this defamation occurred only once. It seems that the priest finally fled to Monachesi, seeking refuge in a suitable parish. Although the sum of one hundred scudi assigned by St. Pius V is demonstrably to be understood, nevertheless, from his own words, a portion remains, which is double that amount, and which, in a small town, is certainly insufficient for a livelihood. Considering these and other things, the following question was proposed to be clarified: Whether a perpetual vicar is exempt from paying the customary tax, commonly called "di ricchezza mobile," by the chapter in the aforementioned case. RESOLUTION: The Sacred Congregation, after deliberation on June 27, 1891, decided to respond: Negatively. FROM WHICH WE GATHER: I. That it is a rule of law that no one can change a decision to the detriment of another: it is more pleasing to disagree. And that, furthermore, II. Nothing is more in accordance with right reason and both laws than that pacts, agreements, and obligations derived therefrom should be religiously observed. III. That the burden of the tax "di ricchezza mobile" was spontaneously recognized and accepted by the Vicar when the decree of the Bishop was ratified by his proper subscription.

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FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS

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LETTER: From the Most Illustrious Prefect to the Archbishops, etc., concerning the aforementioned decree, Vol. XXIII, p. 305.

Most Illustrious and Reverend Lord, as a brother, by order of His Holiness Pope Leo XIII, I transmit to Your Eminence, enclosed in these letters, the Decree, which, by the order of the same Holiness, was recently issued by this Sacred Congregation for the Affairs and Consultations of Bishops and Regular Canons.

[*Latin ed. p. 190*]

LETTER 190. Then, whenever the manifestation of conscience is entirely prohibited, whether it comes by whatever name, this applies to monasteries of religious women, even those of solemn vows, and to institutes of simple vows of both sexes, with the exception of institutes of men which are entirely ecclesiastical in nature and governance. Furthermore, declarations

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and provisions are given regarding the moderation of Holy Communion, and regarding the more easily granting of extraordinary confessors. Moreover, His Holiness has entrusted to me, to Your Eminence, that I transmit the aforementioned Decree, so that Your Eminence will take care to communicate copies of it to the Bishops dependent on Your Eminence; who, in turn, will communicate copies of the same Decree to the respective Superiors and Heads of the monasteries and pious houses of their dioceses. Finally, His Holiness commands all Local Ordinaries to diligently and carefully oversee and ensure the full execution of the aforementioned Decree, even by the force of a special delegation from the Apostolic See. These things were to be signified and declared to Your Eminence, to whom I pray for all good things from the Lord. To Your Eminence, in Rome, on the 20th of January, 1891. Your most devoted brother, J. CARDINAL VERGA, PREFECT. FR. ALOYSIUS, BISHOP OF CALLINICAE, SECRETARY. DOUBTS concerning the decree "Concerning..." Vol. XXIII, p. 505. I. Does the decree beginning "Concerning..." of December 17, 1890, also include the Daughters of Charity, founded by St. Vincent de Paul? II. Does the aforementioned decree, besides female institutes, include only male institutes of a lay condition, such as the Brothers of the Christian Schools, etc.; or does it also include ecclesiastical congregations, such as the Salesians, founded by Don Bosco, the Rosminians, the Lazarists, and similar congregations, in which, besides priests, there are many lay brothers? Does the decree beginning "Concerning...", of December 17, 1890, also include the Daughters of Charity founded by St. Vincent de Paul? Does the aforementioned decree, besides female institutes, include only male institutes of a lay condition, such as the Brothers of the Christian Schools, etc.; or does it also include ecclesiastical congregations, such as the Salesians founded by Don Bosco, the Rosminians, the Lazarists, and similar congregations, in which, besides priests, many lay brothers are found?

[*Latin ed. p. 191*]

DOUBT 191. The Holy Congregation responded in this manner to the doubts: REGARDING THE FIRST POINT. — Affirmative, according to the following terms: "Considering the particular institution of the Daughters of Charity, and also the Pontifical declarations and privileges granted, especially by His Holiness Pius VII and Leo XII, confirmed by His Most Holy Name Leo XIII on June 25, 1882; the publication and oversight of the execution of the aforementioned Decree, with regard to these young women, pertain to the Superior General for the time being of the Congregation of the Priests of the Mission, either directly or through the Visitators of the same Congregation, with the exception of the Apostolic delegation to the local Ordinaries in the case of negligence on the part of the Superiors of the Mission Congregation." REGARDING THE SECOND POINT. — Affirmative regarding the first part. Negative regarding the second part. And

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after a report on the aforementioned matters was made to His Holiness Pope Leo XIII in an audience held by me, the Cardinal Prefect, on April 12, 1891, His Holiness approved and confirmed the resolutions of the Holy Congregation. Contrary opinions notwithstanding. Given in Rome, from the Secretariat of the aforementioned Holy Congregation of Bishops and Regulars, on April 15, 1891. I. CARDINAL VERGA, PREFECT. FATHER ALOYSIUS, BISHOP OF CALLINICEN, SECRETARY. FROM THE SECRETARIAT, a Brief Letter from His Most Holy Name Leo XIII, by which the feast of Saint Joseph is granted to be celebrated under both precepts in the regions of Piedmont, Liguria, Sardinia, and Lombardy. It was most desirable that, among all the regions of Italy, the sacred day of Saint Joseph, the Immaculate Spouse of the Mother of God, be observed with such devotion, since in all of these regions piety is cultivated with great zeal for the same Saint; and we are pleased that this opportunity has been given to us. Indeed, letters have been presented to us by the Venerable Brothers, the Bishops of Piedmont, Liguria, and Sardinia, in which they, as interpreters of the desires of the clergy and the people, request from Us that the twenty-ninth day of March, dedicated to the memory of the Holy Patriarch, be celebrated in their Dioceses, as in other regions of Italy, under both precepts. We received these requests with a joyful heart, since they are worthy of the piety of those who make them, and they are in perfect agreement with Our long-held desire. Following the footsteps of Our Predecessor of blessed memory, Pius IX, who, with singular zeal, promoted the cult of the Holy Spouse of God the Mother, and designated Him as the heavenly Patron of the entire Church, We, on the eighth day before the Kalends of September,

[*Latin ed. p. 192*]

192 By letters issued in the year 1889 to the entire world through Apostolic Letters, We have urged all Christians to foster and increase within themselves the pious affection towards the most chaste Spouse of the Virgin Mother, and to promote His cult everywhere with effective words. To these exhortations and precepts of Ours, such eagerness has been shown everywhere that it has clearly appeared how deeply piety resides in the hearts of Christians towards the Holy Patriarch, and how much hope all place in His heavenly intercession. Thus, with piety aroused and zeal increased everywhere, the people of Italy could not be lacking, among whom, certainly as much as among any other nations, piety flourishes and grows towards Saint Joseph. Consequently, without regard for regions, efforts are now being diligently devoted throughout Italy to establishing the cult of Saint Joseph, all by the will of the people themselves. Certainly, no piety, no duty of any Christian, deserves greater praise than that which the regions of Italy strive to achieve above all other nations, in which God has placed, with singular favor, both the See of His Vicar on earth, and the chair of divine truth, and the center of Catholic unity. We, who embrace all peoples and

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each individual with paternal benevolence, regard the Italians with a special feeling of charity, and We hope that this new pledge of piety, which is to be offered to the Blessed Virgin's Spouse in the aforementioned regions, will be received favorably by Him to whom it is offered, and will be fruitful for those who offer it. For there is nothing more effective in these difficult times for preserving the heritage of the faith, and for living the Christian life, than to merit the patronage of Saint Joseph, and therefore to reconcile the grace of Mary, the most chaste Mother, with her clients. Wherefore, wishing to respond favorably to the prayers and vows addressed to Us, moved by the supplications of the Sacred Prelates who preside over the aforementioned dioceses, by Our Apostolic Authority, through the force of these letters, We command and decree that the twenty-ninth day of the month of March, dedicated to the commemoration of the Blessed Patriarch Joseph, be duly observed as a feast day in all and each of the regions of Piedmont, Liguria, Sardinia, and Lombardy. Therefore, all Christians are commanded to attend the Holy Sacrifice of the Mass, and to abstain from those works which are commonly called servile. Notwithstanding, even though they are worthy of special and individual mention and exemption, if any should act to the contrary. We wish that the same faith be given to these present letters, whether transcribed or printed, signed by the hand of a public notary, and sealed with the seal of a person constituted in ecclesiastical dignity, as would be given to the present letters themselves, if they were exhibited or shown. Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the ninth day of March, in the year 1889, in the fourteenth year of Our Pontificate. M. CARD. LEDOCHOWSKL.

[*Latin ed. p. 193*]

193 ENCYCLICAL LETTER of the Most Holy Pope Leo XIII to all Ordinaries of places, "On the Rosary of the Blessed Virgin Mary." As the month of October approaches, which is dedicated to the most blessed Virgin Mary of the Rosary, a most pleasing memory comes to us, how we have commended to you, Venerable Brothers, in past years, that the flocks of the faithful everywhere, stirred by your authority and diligence, might increase and deepen their piety towards the great Mother of God, powerful helper of the Christian people, and that they might approach her devoutly throughout the entire month, invoking her through the most holy Rosary, which the Church has always been accustomed to use and celebrate, especially in times of doubt and difficult circumstances, with a hoped-for outcome. — It is our desire to make this intention known to you again this year, and to send and even double our exhortations to you; this is urged and compelled by the charity of the Church, whose labors, rather than being alleviated, are increasing both in number and in severity. We deplore the evils that are known to all: the Church, which safeguards and transmits the most holy dogmas, is attacked and persecuted; the integrity

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which it defends of Christian virtue is derided; the order of sacred ministers is, and especially the Roman Pontiff, subjected to reproach in many ways, imbued with envy; and even Christ Himself, through the most impudent audacity and heinous crime, is assaulted, as if those who attack seek to utterly destroy and abolish the divine work of His redemption, which no will can ever abolish or destroy. — These things are not new to the Church that is engaged in battle: which, as the Apostles of Jesus foretold, must daily come into conflict and struggle in order to teach men the truth and lead them to eternal salvation; and which, in truth, has fought courageously throughout the ages, finding no greater joy or glory than in being able to consecrate itself with the blood of its Author, in which the hope of its most complete victory is clearly contained. — Nevertheless, it should not be doubted that these constant struggles cause great sadness to the best of men. For, indeed, there are many who, led astray by the perversity of errors and the arrogance towards God, are far removed; and there are many who, while adhering to any form of religion, have already renounced the divine faith.

[*Latin ed. p. 194*]

194 LETTER: It is to be lamented; and it is not a small number of Catholics who, though retaining the name of the religion, do not render to it the due service and fulfill their duties. Furthermore, it greatly saddens and distresses the soul to consider that so much ruin and harm arise principally from this, namely, that in certain states, the Church is either no longer held in esteem, or that endeavors dedicated to its salutary influence are met with opposition; in this matter, it is evident that the just and severe judgment of God is manifest, who allows nations departing from Him to weaken through the most grievous blindness. Therefore, the very matter itself cries out, and cries out more vehemently each day, that Catholics must diligently and perseveringly employ prayer and supplication to God; and this ought to be done not only privately by each individual, but all the more publicly, gathered in the sacred buildings, earnestly imploring that the Provident God may deliver the Church from importunate and wicked men, and that the afflicted peoples may be restored to soundness of mind and brought back to the light and charity of Christ. For truly, the difference between man and the Church is wondrous! The world insists on its life, which is full of labor, relying on resources, power, arms, and ingenuity; the Church, on the other hand, progresses through the ages with full vigor, relying solely on God, to whom she raises her eyes and hands in daily and nightly prayer. Indeed, although she does not neglect the other, whatever safeguards that time and the care of God offer to mankind, she nevertheless places her principal hope in praying, beseeching, and imploring God. From this she derives the vital spirit that sustains and strengthens her, for it happens to her, through constant prayer, that,

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untouched by the vicissitudes of human affairs and in perpetual union with the Divine Majesty, she draws the very life of Christ the Lord and transmits it peacefully and tranquilly; almost in the likeness of Christ Himself, whose sufferings, which He endured for the common good, did not diminish or take away in any way from His most blessed light and joy. These are indeed great testimonies of Christian wisdom, which have always been and have been religiously observed by those who are worthy of the name of Christian, and whose prayers to God were greater and more frequent, if any calamity befell the holy Church or her supreme governor through the machinations of wicked men.

(1) 1 Thessalonians 5:17.

(2) 2 Thessalonians 3:2.

[*Latin ed. p. 195*]

195. Through plots and violence, this had happened. — A striking example of this is found in the faithful of the Eastern Church, an example truly worthy of being proposed to all for imitation. Peter, the vicar of Christ the Lord, the highest shepherd of the Church, was delivered to bonds, by the wicked order of Herod, and was certainly destined for death; and there was no one there to help him, no assistance. But that true help was not lacking which holy prayer obtains from God: namely, as divine history recounts, the Church poured out fervent prayers for him; and the Church prayed without ceasing to God for him (1): and all were inflamed with the desire to pray, as the anguish of such great suffering bit more keenly. And it is clearly known that, so that the prayers of those praying might succeed, Peter was miraculously freed, and the Christian people always celebrate this with joy. — But Christ Himself gave a more excellent example, by which He instructed and formed His Church, not only through precepts, but also through Himself, in all holiness. For He, who in all His life devoted so much effort to prayer, Himself, in His final hours, when, in the garden of Gethsemane, His soul was overwhelmed with immense bitterness, and He languished towards death, then truly He prayed to the Father, not merely praying, but praying at length (2). And He certainly did this not for Himself, fearing nothing, needing nothing from God; but He did it for us, for His Church; to which He willingly and gladly received, even then, the future prayers and tears, making them fruitful with grace. When, through the mystery of the Cross, the salvation of our race was accomplished, and the administration of that salvation, the Church, was established on earth, and rightly constituted, a new order of God's providence began to operate in the people. — Divine counsels deserve to be considered with great reverence. The eternal Son of God, when He wished to take on human nature, for the redemption and honor of mankind, and thus to enter into a certain mystical union with the entire human race, did not accomplish this until the most excellent consent had been obtained, of

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the designated Mother, who in a certain way represented the person of the entire human race, according to that most true and excellent opinion of the illustrious Aquinas: "Through the Annunciation, the consent of the Virgin was awaited, in place of all of human nature" (3). From this it is no less true and proper that the EPISTLE (1) Acts XII, 5. (2) Luke XXIII, 5. (3) III. q. XXX, a. 1.

[*Latin ed. p. 196*]

196. It may be affirmed that, concerning that immense treasure of all graces which the Lord has brought, namely, that grace and truth have been given through Jesus Christ (1), nothing is granted to us, except through Mary, if God so wills; for just as no one can approach the Father except through the Son, so likewise, no one can approach Christ except through the Mother.

How clearly the wisdom, prudence, and mercy of God shine forth in this arrangement! How fitting it is to the weakness and frailty of man! For we believe and praise the infinite goodness of God, and we also believe and fear His infinite justice; and while we acknowledge Him as the most loving Savior of blood and soul, we also tremble before Him as an unpitying Judge. Therefore, conscience, trembling, utterly needs a most devoted advocate and patron, one who possesses great power with God, and who is so full of kindness that he will not refuse the patronage of the most desperate, and who will raise up those who are afflicted and lying in hope of divine mercy. That most excellent Mary: she is indeed powerful, the mother of the Almighty God, but, which is even sweeter, she is gracious, exceedingly kind, and most indulgent. God has granted us such a one, to whom, by the very fact that He chose her as the mother of His only Son, He has imparted maternal feelings; she breathes nothing but love and devotion. Jesus Christ Himself showed us such a one, when He willingly submitted to and obeyed Mary as a son obeys his mother. He proclaimed her as such from the cross, when He entrusted the entire human race, in the person of the disciple John, to her care and protection. Finally, she herself gave herself, who, with a heart full of the immense inheritance of labor left by her Son, immediately began to devote herself to all duties.

This most precious counsel of mercy, established in Mary by divine institution and ratified by the testament of Christ, has been felt and cherished with great joy from the beginning by the holy apostles and the faithful; it has also been recognized and taught by the venerable Fathers of the Church, and all nations of the Christian world throughout every age have agreed upon it unanimously; and this very thing, even in the silence of all memory and letters, speaks with a certain voice that bursts forth from the heart of every Christian man, most eloquently. It is certainly due to divine faith that we are impelled with a certain powerful impulse, and are most readily drawn to Mary; for there is nothing older or more desirable than

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that we should receive her into our protection and faith, to whom the plans and works, the integrity and the [John 1:17].

[*Latin ed. p. 197*]

In this letter, let us fully believe in the trials, anxieties, and joys, the prayers and vows, in all that is ours: that all pleasant hopes and confidence may rest upon this, that what is presented to God by us, unworthy ones, and which might be less pleasing to Him, may, when entrusted to the most holy Mother, be most pleasing and accepted. The soul, understanding the truth and sweetness of these things, finds such consolation that it grieves greatly for those who, lacking divine faith, do not greet Mary, nor have her as their Mother; and it grieves even more for those who, though partakers of the holy faith, dare to accuse the good of excessive devotion to Mary, thereby greatly harming piety, which is proper to children. Therefore, because of this, through which the Church is so severely afflicted, let all her pious children readily see how strongly they are bound by the sacred duty of praying more fervently to God, and by what means they must strive that these very prayers may have the greatest efficacy. Following the examples of the most religious fathers and ancestors, let us take refuge in the holy Lady Mary, our Queen; let us call upon Mary, the Mother of Christ and our own, and implore her: "Show yourself to be a mother, for through you the prayers of those born of you are heard, and you carried him who was born for us" (1).

Indeed, since there are various ways of honoring the divine Mother, and because it is desirable to indicate those which are most suitable, and which we know to be both superior in themselves and more pleasing to her, it seems fitting to mention the Rosary in particular, and to impress it deeply upon your minds. This prayer ritual is commonly called a "crown," and for this reason also, because it connects the great mysteries of Jesus and Mary, their joys, sorrows, and triumphs, in a blessed way. If the faithful, with pious contemplation, recall and contemplate these mysteries in order, they will surely find how much help they can draw to strengthen their faith and to protect themselves from the plague of ignorance or error, and also to revive and sustain their spirit. In this way, the thoughts and memories of the one who prays are illuminated by the light of faith, and they are drawn to these mysteries with the greatest devotion, and in them, they can marvel at the unspeakable work of human salvation, accomplished at such a great price and through so many things; then, truly, the soul is inflamed with love and grace upon these divine arguments of charity, and its hope is confirmed and increased, eager and uplifted towards the heavenly rewards prepared by Christ for those who strive to imitate him in example and in communion.

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(1) *From the Sacred Liturgy.*

[*Latin ed. p. 198*]

198 EPISTLES have been added. This one is interspersed with words of prayer, from the very Lord, from the Archangel Gabriel, from the Church: which, full of praises and salutary petitions, repeated and continued in a certain and varied order, bears new and sweet fruits of piety. It is, however, to be believed that the heavenly Queen herself has added power to this kind of prayer, because it was instituted and spread by the illustrious Father Dominic, through her divine inspiration and guidance, during the most adverse age for the Catholic name, and because it is very similar to this one of ours, as if it were a most powerful weapon for defeating the enemies of the faith. — For the sect of the Albigensian heretics had invaded many regions, both secretly and openly; the most terrible offspring of the Manicheans, whose inhuman errors, deceptions, and murders caused excessive hatred for the Church. It was scarcely possible to trust human defenses against this most pernicious and insolent crowd, when divine help, the support of the Rosary, came forth. The Virgin, favoring us, the glorious conqueror of all heresies, weakened and shattered the forces of the wicked, saving and protecting as many as possible. Similar things have been recounted in each nation, either dangers repelled or benefits obtained, which ancient and recent history commemorates with most evident testimonies. — Also, this is a notable argument: how, immediately after the institution of the Rosary, its custom was widely adopted and practiced among all classes of citizens. For the Divine Mother, who shines with so many and such great praises, and who is the most excellent of all, the Christian people honor her with many titles and in many ways: yet she has always especially desired this title of the Rosary, this manner of praying, in which, as it were, a pledge of faith and the highest debt of worship to her seems to be inherent, and she has used it privately and publicly, in the home and family, in established societies, at altars dedicated to her, and in processions, preferring no better way to adorn her sacred solemnities or to earn her favor. Nor should we pass over in silence that certain special providence of our Lady in this matter. Indeed, when, with the passage of time, the zeal for piety seemed to have diminished in some nation, and something of this very custom of prayer seemed to have been neglected, it was then, whether the republic was brought into a formidable danger, or whether some necessity arose—

[*Latin ed. p. 199*]

LETTER 199. The institution of the Rosary, having been restored to its rightful place among the other aids to religion, by common devotion, has flourished anew, and the salutary practice has spread widely. Examples of this are not lacking, and we have them readily at hand. Indeed, in this age, which, as we have already noted, is so harsh for the Church, and which

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is, for us who are seated at its helm by divine providence, exceedingly difficult, it is pleasing and comforting to behold how, with fervent zeal, the Rosary of Mary is cherished and celebrated in every place and among all peoples of the Catholic name; and when we consider that this is due more to the true will of God, guiding and inspiring men, than to any human prudence or ingenuity, our spirit is greatly gladdened, and we are filled with great confidence in the renewal and increase of the Church, under the protection of Mary, and in its triumphs. However, there are some who, although they approve of what we have mentioned, because they have not yet attained what they hoped for, especially peace and tranquility for the Church, and perhaps even see worse times approaching, lose their diligence and fervor in prayer. Let such people first examine themselves, and strive to adorn their prayers with suitable virtues, according to the precepts of our Lord Jesus Christ; and if they do so, let them consider that it is unworthy and impious to seek to determine the time and manner in which they will assist God, who owes us nothing, so that when He hears the prayers of the faithful and crowns their merits, He may crown nothing other than His own gifts (1), and that when our sentiments do not please Him, He may act prudently with His children, pitying their ignorance and acting for their benefit. We, therefore, humbly offer to God, for the benefit of the Church, prayers joined with the intercession of the saints in Heaven, and He never fails to receive and fulfill them with the greatest kindness, both those that bring about great and eternal good for the Church, and those that concern lesser and more temporal matters, which are nevertheless opportune for the former. For Christ our Lord, who loved the Church and gave Himself for it, that He might sanctify it... that He might present it to Himself as a glorious Church (2), adds weight and grace to these prayers, and to His own merits.

(1) St. Augustine, Epistle CXLIV, chapter 106, to Sixtus, chapter v, paragraph 19.

(2) Ephesians v. 25-27.

[*Latin ed. p. 200*]

200. LETTER, which we must strive for, whose intercession and supplication we always hold in divine faith to be efficacious. For, with regard to the external goods of the Church and this life, it is evident that the Church is often subjected to the malice and most vehement power of its adversaries; from them, she suffers the loss of her faculties, the diminution and oppression of her liberty, the vexation and contempt of her authority, and, finally, every kind of injury and harm, even in Potenza. If the wickedness of these men is inquired into, why it does not proceed to the utmost extent of the injury they intend and conspire, the answer is, in fact, that the Church, amidst so many trials, by that very amplitude and glory which is hers, always shines forth and increases, albeit in a varied manner;

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and the principal cause of both is rightly attributed to the virtue of the Church, which implores God. For human reason cannot sufficiently grasp how such a powerful force can exist within such restricted limits; whereas the Church, being pressed into narrow straits, nevertheless triumphs magnificently. This is even more evident in that class of goods to which the Church leads men most closely to the attainment of the highest good. For she is born for this very purpose, and she must, through her prayers, greatly contribute to the divine providence having its proper outcome and perfection in those to whom she ministers: and thus, men, praying with the Church and through the Church, obtain from her what God, almighty, has ordained to bestow from eternity (1). The human mind, in the presence of God's high designs, is deficient in understanding; but there will be a time when, when the causes and consequences of things are made clear by God Himself, for His own benevolence, it will be evident how much power the ministry of prayer has in this matter, and how much utility it can achieve. Then it will be revealed that many, even in this most corrupt age, have remained whole and undefiled from all pollution of flesh and spirit, fulfilling sanctification in the fear of God (2); that others, while indulging in wickedness, have immediately corrected themselves, and have performed good deeds from the very danger and temptation; that some who have fallen have been moved by a certain impulse to rise again and to turn to the embrace of the merciful God. Therefore, we beseech all of you, that you may not yield to the deceptions of the ancient enemy, and that, for no reason whatsoever, you may cease from the practice of prayer (1). *Summa Theologica*, II-II, q. 83, a. 2, from St. Gregory. (2) Corinthians, VII, 1.

[*Latin ed. p. 201*]

LETTER 201: Let them persevere steadfastly in this, without interruption. First, let them be concerned with the highest good, the eternal salvation of all, and with the defense of the Church; then, let them seek from God all other good things for the use and convenience of life, provided that they conform to His most just will, and let them give thanks to the most beneficent Father, whether He grants or denies their requests. Finally, let them conduct themselves with such religion and piety towards God as is fitting and necessary, as the saints were accustomed to do, and as our most holy Redeemer and Master Himself did, with great fervor and tears (1). This is what paternal charity demands, that we pray to God, the giver of all good things, not only with prayers, but also with sincere repentance. And when we do this with all our heart, we encourage all and each to this very virtue, and with it, the most closely joined virtue, with equal zeal. Indeed, prayer strengthens the soul, instructs it in fortitude, and leads it to divine things; repentance compels us to subdue ourselves, and especially our most grievous body, from its ancient wounds, and from its enmity to reason and

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to the law of the Gospel. These virtues, it is clear, are perfectly suited to each other, they help each other, and they conspire together to draw man, born for heaven, away from earthly attachments and to raise him almost to heavenly communion with God. On the contrary, if the soul is inflamed by desires and softened by temptations, it will disdain the delights of heavenly things; and its prayer will be nothing but a cold and languid voice, which is certainly unworthy of God's acceptance.

Before our eyes are the examples of the penance of holy men, whose prayers and supplications, for that very reason, pleased God greatly, and even worked miracles, as we are taught by sacred history. They constantly governed and subdued their minds and their passions; they adhered with the utmost zeal and humility to the teachings of Christ and the documents and precepts of His Church; they did nothing, and willed nothing, except after consulting the will of God; they sought nothing in their actions except the increase of His glory; they restrained and broke their desires with great force, and they treated their bodies with severity and harshness, abstaining from all pleasant things, not out of harm, but out of the grace of virtue. Therefore, they were able to say, as the Apostle Paul said of himself, "Our conversation was in heaven" (1).

(1) Hebrews 5:7.

[*Latin ed. p. 202*]

202 LETTER (2): And for the same reason, it was present only in their prayers to appease and implore God with efficacy. — It is clear that not all can, nor indeed should, do this; nevertheless, that each one may correct his life and manners with a sorrow that is consonant with himself, the reasons of divine justice demand it, to which sufficient amends must be made for what has been done; it is, however, more profitable to have done this voluntarily, while life remains, so that the reward of virtue may be added. — Furthermore, when, in the mystical body of Christ, which is the Church, we are all united and strengthened as members, as Paul says, it follows that, just as the other members rejoice with the rejoicing member, so likewise they should comfort the sorrowing member; that is, Christian brothers, whether in spirit or in body, should readily help their brothers, and, as far as they can, offer assistance: Let the members be concerned for one another. And if one member suffers, all the members suffer with it; if one member is glorified, all the members rejoice with it. For you are the body of Christ, and members one of another (1). And in this example of charity, if anyone, following the example of Christ, who poured forth his life with immense love for the redemption of all our sins, should take upon himself the burdens of others, in this alone is contained that great bond of perfection, by which the faithful are most closely united with one another, and with the citizens of heaven, and with God. — In summary, the action of holy penance is so varied and extensive, that everyone can, with

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a pious and willing heart, practice it frequently and diligently. It remains, Venerable Brothers, that, considering your singular and outstanding piety towards the most holy Mother of God, and your charity and solicitude for the Christian flock, you promise us the results of your endeavors, which are, indeed, excellent; and that the spirit has already begun to bear the fruits that the Catholic religion, which has so often shone brilliantly in devotion to Mary, has already begun to produce, with the most joyous and abundant results. Therefore, to you who call, and urge, and lead the way, let the faithful, especially during the coming month, gather together at the solemn altars of the august Queen and most benign Mother, and let them offer to her, in the manner of children, mystical garlands, woven with the accepted rite of the Rosary.

(1) 1 Corinthians 12:25.

(2) 1 Corinthians 12:25-27.

[*Latin ed. p. 203*]

LETTER 203, approved by Us and ratified, which previously was published by Us on this matter, and sacred indulgences were granted (1). — How glorious and how great it will be, throughout cities, in villages, in estates, on land and sea, wherever the Catholic world extends, for countless millions of the pious, united in praise and bound by prayer, to salute Mary with one mind and voice every hour, to implore Mary, to hope for all things through Mary! Let all, trusting in her, strive that the wandering nations may return to Christian institutions and precepts, in which the firm foundation of public salvation consists, from which also the abundance of desired peace and true blessedness springs forth. Let them strive all the more for this, because it ought to be most desirable for all good people, that the Mother Church may enjoy freedom and tranquility; for this is of no small importance to the highest interests of mankind, from which individuals and states have experienced no harm, but rather the greatest benefits at all times. Now, Venerable Brothers, may God grant you the gifts of heavenly good things, at the prayer of the most holy Queen of the Rosary, so that you may have ever greater help and strength each day to diligently fulfill the duties of your pastoral office: may this be the omen and pledge of the Apostolic Blessing, which We impart to you, and to the clergy and the people of your respective dioceses, with paternal affection. Given at Rome, near St. Peter's, on the twenty-second day of September, in the fourteenth year of Our Pontificate. LEO XIII, Pope.

LETTER from the Most Holy Lord Pope Leo XIII to the Archbishops and Bishops of the German and Austro-Hungarian Empires, concerning the pernicious custom of duels. Moved by the consciousness of pastoral duty and by brotherly love, you reported to Us last year, in letters, on the frequent occurrence of certain contests, which are called duels, among your people. You indicated that this kind of fighting, as if established by custom,

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also causes sorrow even among Catholics (1).

(1) Cf. Encyclical Letter *Supremi Apostolatus*, dated September 1, 1883; Encyclical Letter *Superiore anno*, dated August 30, 1884; Decree of the Holy Roman Church, *Inter plurimos*, dated August 20, 1885; Encyclical Letter *Quamquam pluries*, dated August 15, 1889.

[*Latin ed. p. 204*]

204 LETTER: You also requested that Our voice might strive to dissuade people from such an error. — Indeed, this error is exceedingly harmful, and it is not confined to the boundaries of your cities, but extends much further, so that scarcely any people are found to be free from its contagion. Therefore, we commend your zeal, and although it is well known and understood what Christian philosophy, with the complete agreement of natural reason, prescribes in this matter, it will be expedient and useful for Us to recall a few things. Both the divine law, both that which is promulgated by the light of natural reason, and that which is written by divine inspiration, strictly forbid anyone from inflicting harm or wounding another, except for a public cause, or when compelled by necessity for the sake of his own safety. But those who provoke or accept a private duel act, direct their mind and strength, without any compulsion of necessity, to take a life or, at the very least, to inflict a wound upon their adversary. Furthermore, both divine laws forbid anyone from recklessly endangering his own life, with a grave and manifest distinction, since no reason of duty or generous charity would suggest such a thing; but this blind recklessness, which despises life, is plainly inherent in the nature of dueling. Therefore, it is clear to no one and doubtful to no one, that those who engage in a private duel, both commit the crime of another's destruction and voluntarily risk the loss of their own life. Finally, there is scarcely any pestilence that is more abhorrent to the discipline of civil life and that more perverts the just order of the state than the permitted license of citizens to act as their own avengers, using private force and violence, and to seek revenge for an honor which they believe has been violated. For these reasons, the Church of God, which is the guardian and avenger of truth, as well as of justice and honesty, within whose embrace public peace and order are contained, has never failed to strongly condemn, and has sought to restrain those guilty of private duels with the most severe penalties. The Constitutions of Alexander III, Our predecessor, which are inserted in the books of canon law, condemn and abhor these private encounters. The Council of Trent, moreover, severely punished all those who engage in them, or participate in them in any way, and decreed that they should be marked with infamy, and be considered unworthy of the embrace of the Church, and denied ecclesiastical burial if

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they should die in a duel.

[*Latin ed. p. 205*]

LETTER 205. Our Predecessor, Benedict XIV, amplified and explained these matters in the Constitution issued on November 10, 1742, which begins with the words "Detestabilem." More recently, in these latter times, Pope Pius IX, in his apostolic letters, which begin with the words "Apostolicae Sedis," in which the sentences of censure are limited, openly declared that ecclesiastical penalties are incurred not only by those who engage in duels, but also by those who are called "seconds," as well as by witnesses and accomplices. — The wisdom of these laws shines forth all the more clearly as it becomes evident how inadequate are those arguments that are often put forward to defend or excuse the heinous practice of dueling. For what is commonly asserted, that this kind of contest is, by its very nature, intended to remove the stains that calumny or accusation have inflicted upon the honor of a citizen, is of such a nature that it can deceive no one but the most naive. For although the victor may emerge from the contest, having, after receiving an injury, initiated it, it will be the judgment of all upright men that such an outcome proves not that he is more honorable, but rather that he is more skilled in fighting or in handling weapons. And what reason could be given for defending the honor of one who falls in such a contest, if not one that is equally unsound and far-fetched? Indeed, there are few who commit this crime who do so without being deceived by a false opinion. It is, in truth, the lust for revenge that drives proud and fierce men to seek punishment: and if they would only restrain their passions, and obey God, who commands us to love one another, and who forbids anyone to be harmed, and who severely condemns the desire for revenge in private individuals, and who reserves the power of inflicting punishments for Himself, they would easily abandon this abominable custom of duels. Nor is there any just excuse for those who accept a challenge based on fear, that they might be considered cowardly by the common people, if they refuse to fight. For if the duties of men were to be determined by the false opinions of the crowd, and not by the eternal standard of right and justice, there would be no natural or true distinction between honorable actions and disgraceful deeds. The wise men of the nations themselves knew and taught that the judgments of the crowd should be scorned by a strong and steadfast man. Rather, it is a just and holy fear that turns a man away from unjust bloodshed, and makes him concerned for his own safety and that of his brothers. Indeed, he who despises the empty judgments of the crowd, who prefers to endure insults rather than to neglect any duty, possesses a spirit that is far greater and more noble.

[*Latin ed. p. 206*]

206. The letter speaks of a man who rushes to arms, being unjustly in-

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sulted. Indeed, if one wishes to judge correctly, he is the one in whom true fortitude shines forth, that fortitude, I say, which is truly called virtue, and to which glory is a fitting companion, not a deceitful one. For virtue consists in that which is in accordance with reason, and that which is not approved by the judging God is utterly foolish, regardless of any glory it may receive. Finally, the shamefulness of duels is so evident that even the lawmakers of our own age, although supported by the votes and patronage of many, have deemed it necessary to restrain them by public authority and prescribed punishments. What is most deplorable and pernicious in this matter is that written laws are almost entirely disregarded in practice: and this often happens with the knowledge and silence of those whose duty it is to punish the guilty and to ensure that the laws are obeyed. Thus, it comes to pass that it is permitted, with impunity, to descend to individual combats, disregarding the majesty of the law. It is also absurd and unworthy of a wise man to think that certain citizens, wearing togas, should be kept away from this type of contest, while it is, on the other hand, permitted to soldiers, because they claim that such practice sharpens military virtue. First of all, honorable and dishonorable things differ by nature, and they cannot be changed into their opposites simply because of the different status of people. Indeed, all men, in whatever condition of life, are equally bound by divine and natural law. Furthermore, the reason for this indulgence towards soldiers should be sought in the public good, which can never be so great as to outweigh the voice of natural and divine law. What is more, the very reason for this indulgence is manifestly lacking! For the incentives for military virtue are aimed at making the state better prepared against its enemies. But can this be achieved through that practice which, by its very nature, leads to strife among soldiers, the causes of which are often numerous, and in which one or the other is killed, thus weakening the defenses of the homeland? Finally, the recent age, which boasts of its superior cultivation of the humanities and its more refined morals compared to previous centuries, has become accustomed to disregarding older institutions and often rejects anything that clashes with the appearance of more modern refinement. Therefore, what is it that this age, so devoted to humanity, fails to reject in the custom of duels, a relic of a more ancient and barbaric age? It will be your task, Venerable Brothers, to impress diligently upon the minds of your people these things that we have briefly touched upon, so that they may not rashly accept false opinions on this matter, nor allow themselves to be led astray.

[*Latin ed. p. 207*]

LETTER 207: Let them suffer the judgment of men. We urge you, specifically, to ensure that young men maturely become accustomed to understanding and judging what the Church, in accordance with natural philosophy, judges and understands; and that they consistently take this judgment as the standard for their actions. Indeed, just as it is customary in

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some places for Catholics, especially those of flourishing age, to spontaneously and perpetually refrain from joining dishonorable societies, so too we consider it fitting and highly beneficial for them to make a pact among themselves, promising under oath never to engage in duels at any time or for any reason. We humbly beseech God to strengthen our common endeavors with heavenly virtue, and to generously grant, for the sake of the public good, the integrity of morals, and Christian life, whatever we desire. Furthermore, as a witness to the blessings of divine grace and also to the benevolence of Ourself, We impart to you, Venerable Brothers, Our Apostolic blessing in the Lord. Given in Rome, at St. Peter's, on the twenty-second day of September, in the year one thousand eight hundred and ninety-one, in the fourteenth year of Our Pontificate. LEO P. P. XIII.

FROM THE HOLY CONGREGATION OF THE COUNCIL OF NOVARA.

DISPENSATION FROM IRREGULARITY.

June 27, 1891.

By summary petition.

SUMMARY OF FACTS.

The Bishop of Novara, on April 24th of this year, transmitted a letter to the Most Blessed Father, which we receive with great joy, stating the following: "Jacob C., a native of the Diocese of Novara, twenty-two years of age, who is studying philosophy in the city seminary, earnestly desires to be promoted to the priesthood. However, there is an impediment due to an irregularity caused by a defect in the conformation of the right hand. This defect consists of..."

[*Latin ed. p. 208*]

208 NOVARA. He lacks a thumb on one hand, and the index finger is missing on the other. However, the petitioner, despite this infirmity of hand, believes that he can properly perform all the ceremonies of the Holy Sacrifice of the Mass without danger of irreverence or scandal; and, indeed, after several trials, his judgment in this matter was confirmed by the most experienced master of ceremonies. The petitioner is endowed with excellent morals, and his promotion will certainly bring benefit to this diocese of Novara, in which there is a great shortage of priests. Given these circumstances, we earnestly commend the petitioner's requests, and we submit them, along with the testimonies of the physician, the master of ceremonies, and the rector of the seminary, to the most wise judgment of Your Eminence. Furthermore, from the testimonies presented, it is evident

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that the petitioner is not to blame for the irregularity, that he is a man of commendable piety and character, and that he is capable of celebrating the Holy Sacrifice without irreverence and to the admiration of the people. However, the master of ceremonies observes that, while using the thumb and middle finger of the same hand, he would administer the sacred rites with some difficulty, and that, moreover, the missing index finger would cause astonishment.

Synopsis of the Discussion:

Although the Sacred Congregation for the Clergy is accustomed to relax the strictness of the law when granting dispensations from irregularities, it is to be feared that this case will prove more difficult. Thus, as has happened in several instances, on January 24, 1864, a dispensation was denied to a certain Joachim de Zayas, who, due to burns contracted on the thumb and index finger of his right hand, had contracted fingers, and who lacked nearly half of the phalanges of each finger, although the favorable opinion of the master of ceremonies and the recommendation of the Cardinal Archbishop were added to his prayers. However, in the case of James, the excellent morals, the shortage of priests, and the resulting benefit to the diocese of Novara, could pave the way for leniency. There are, indeed, examples in which the Sacred Congregation, keeping these things in mind, has...

[*Latin ed. p. 209*]

NOVARA. 209. The matter was brought before the Congregation, on September 22, 1860, in Macerata; on September 17, 1853, in Apuana; on December 17, 1859; and especially in Cephalonia. On June 16, 1866, it was noted that the left thumb was entirely deficient, and a dispensation and authorization were granted. Having stated these facts, the question was raised as to what should be the answer in prayer. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on June 27, 1891, decided to respond: For the sake of [the petitioner] and in accordance with the intention, it is the opinion that the petitioner should abstain from distributing Holy Communion, unless there is a necessity.

TURIN. MARRIAGES. July 25, 1891. Session 24, chapter 1, concerning reforms in marriage. SUMMARY OF THE CASE. Ludovicus Appel, originally from Bavaria, presented humble petitions to the Holy Pontiff, in which he begged that the Holy Council would deign to inquire into a marriage begun by him in Turin on October 31, 1860, with Latina Pettenati, in the parish church of Saint Francis of Paola, which he considered to be invalid and null, especially according to chapter [omitted]. The matter being presented to the Sacred Congregation of the Council, letters were sent to the Archbishop of Torino, with the instruction that he should complete the proceedings regarding the alleged nullity of the marriage, according to the Constitution of Benedict XIV, etc., with the faculty, as

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needed, of delegating the task. The Archbishop of Torino, after hearing the case, appointed a judge, a defender of the marriage bond, and a notary, and notified the plaintiff to appear in the court of Torino to answer the questions posed by the defender of the marriage bond. However, since the petitioner, who resides in Rome, declared that he was unable to bear the expenses of this journey, the Archbishop delegated this task to Rome, to the Reverend D. Eugenius Acia, Volume XXIII, page CGLXXX.

[*Latin ed. p. 210*]

210 TURIN. Falconi, a judge in the Vicariate Tribunal of the City, having accepted the delegation, examined the accuser and subjected her to questioning according to the questionnaire prepared by the party seeking the marriage annulment, and sent the responses to the Turin court. In the meantime, after a diligent investigation, it was not possible to determine where the domicile of Latina Pettenati was located, nor were witnesses present to be examined. Therefore, all the proceedings were reported to the Holy Congregation. The accuser's responses can be summarized as follows: that while Hostilia was near Mantua, she was captivated by the love of Latina Pettenati, and also caused her to become pregnant. When she was supposed to travel to Turin at the invitation of the Minister of War of that kingdom, in order to enlist in the military, she took her along, without the father's knowledge, and, after passing through Padua, entrusted her to her brother who lived in Ferneres, who shortly thereafter married her in Turin. On the 22nd of June, the parish priest of Saint Francis of Paola requested from the Archbishop the faculty to assist in the marriage that they wished to enter into, in order to legitimize the child who would soon be born; but this faculty was denied. In the meantime, they established a residence in the new Borgo, under the parish of Saint Mary of the Angels. When war was imminent between the King of Sardinia and the Emperor of Austria, the Minister Cavour, who was in charge of foreign affairs, considered it opportune to send a certain secret agent to explore the various provinces of Austria and to report on the number, strength, and movements of the enemy army. For this task, Happel was chosen, because he spoke the German language and was experienced in the conditions of the Austrian army, since he had served for seven years under the same banner. He traveled through various provinces of Austria, and returned to Turin at the end of October. But since he had to return to Germany for the same purpose of reconnaissance, it was necessary to find some pretext to remove all suspicion; and it was decided that Ludovicus Appel should marry his concubine, Latina Pettenati, so that, under the guise of reconciling with his parents, who lived in Flusingia, near Munich, he could...

[*Latin ed. p. 211*]

Taurinen. 211 In Stadtamhof, Bavaria, he could freely and repeatedly

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travel through Germany; and so that no obstacle would be removed, Count Cavour himself addressed the General Vicar, and obtained from him whatever he wished. Therefore, the following day, early in the morning, the marriage was celebrated in the Church of St. Francis of Paola, in the presence of the parish priest Centa, who had no jurisdiction over them, and two witnesses who happened to be present. He does not omit to hint that Count Cavour handsomely rewarded this prompt obedience, both from the General Vicar and from the parish priest, towards his wishes. For he first appointed him to the Archbishopric of Vercelli, and then enriched him with a generous commendation to the Order of Malta! When asked why he had delayed the introduction of this case, he replied that he had been waiting for the death of the parish priest Centa, so as not to expose him to the danger of serious harm! When asked whether he knew the whereabouts of his fiancée, he replied that he did not know whether she was alive or dead, which he also affirmed regarding his only surviving daughter. The process, as it is clear, is truly singular, since it is based solely on the assertions of the plaintiff, without the other party having been heard, or any witness having been called. A Synopsis of the Arguments. Louis Appel sought to establish the validity of his marriage on three grounds: on the basis of abduction, on the basis of lack of domicile, and on the basis of lack of consent. Regarding the abduction, he claimed that, without the knowledge and consent of the girl's father, he had abducted her and transported her to a territory under papal jurisdiction, which, according to the Austro-Pontifical Concordat, constituted abduction. However, the parish priest of Hostilia testified that, at the time when this abduction took place, the girl's mother had already passed away, and her father had abandoned the family four years earlier. Therefore, the girl was of her own free will and fully enjoyed her freedom; and the witness himself testifies that she had already had illicit relations with three other men before surrendering herself to him.

[*Latin ed. p. 212*]

2i2 TURIN. Concerning the relationships. Therefore, no injustice was done to her, and she willingly entered into the union. Furthermore, the girl who was taken must always have been in the power of the one who took her, and never placed in a safe location. On the contrary, at Pado, she was given into the hands of her brother, who lived in Ferneres along with two of her uncles, and she stayed with them for the entire month; but the one who took her continued on his journey towards Turin; therefore, she was placed in a safe location. Furthermore, after she rejoined him in Turin, she remained alone for as long as Happel was away on a long journey, and she freely consented to the marriage upon his return. Therefore, the essential conditions required for a valid abduction are lacking, in the sense that the Council of Trent declared the marriage between the abductor and the abducted to be invalid and null. Lewis denies that he ever lived in the

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parish of Saint Francis of Paola, but that while he lived in Turin, he always lived with Latina in Via Borgo Novo, which is within the boundaries of the parish of Saint Mary of Angelorum. However, you believe that the advocate will corroborate this assertion, upon which the outcome of the case depends, with all kinds of evidence, whether derived from the testimony of fellow residents, or from the testimony of the person who rented the house they inhabited, or finally, from the written testimony of the parish priest of Saint Mary of Angelorum, in which he declares that Lewis Appel and Latina Pettenati lived within the boundaries of his parish from the beginning of July until the end of October. On the other hand, two letters serve in place of all the evidence: one addressed to Latina, dated June 18th, and the other to the advocate, dated August 8th; both have this address: "Turin, Borgo Nuovo, no. 7." What can be inferred from this? Namely, that Latina Pettenati lived in Borgo Nuovo until June 18th, from the time of her arrival in the city. But from that day until October 31st, when the marriage was celebrated, a period of four months elapsed: how do you prove this interval of time?

[*Latin ed. p. 213*]

TURIN. 213 Did [Latina] not move her residence to the parish of Saint Francis of Assisi? And she did, in fact, move. For when the parish priest, Centa, on the 22nd of that same month of June, requested permission from the Archbishop Franzoni to join them in marriage, and this license was denied, he wrote: "They are domiciled in this parish, although only temporarily." These very words indicate that they presented themselves to the aforementioned parish priest as travelers, who, having begun a marriage, would continue their journey; but in reality, they were not such. For, in fact, the man had already, on the 12th of that same month, enlisted in the Alpine military service. As for [Latina], no evidence whatsoever, nor even the slightest indication, appears that she had left the city. Therefore, I believe that the residence she established at that time in the parish of Saint Francis has never changed; and therefore, she has, as it were, acquired a residence there. Indeed, as mentioned above, [Lewis] Appel was obliged to return to Germany on business as a secret agent, and it was deemed appropriate, in order to remove all suspicion, that he should first enter into marriage with [Latina] Pettenati. The very [Cavour], if you listen to the account, urged the Vicar General to grant a dispensation from the three public announcements due to the urgency of the situation. But the Vicar General insisted that the parish priest, Centa, provide written proof that both parties, or at least one of them, had a residence in his parish. This he did, indicating the street and house where they resided. With this testimony, the dispensation was granted. As is clearly evident, it was not about any residence [agebatur, sed de eo domicilio vel quasi domicilio a s. Synodo praescripto, ut parochus valide assistere possit contrahentium matrimonio,

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ut eorum parochus proprius. This is confirmed by the marriage certificate, which states that the marriage between [Latina] Pettenati "domiciled in this parish," and [Lewis] Appel "domiciled in Turin," was celebrated on October 31, 1860. Why does it say generically "domiciled in Turin?" because...

[*Latin ed. p. 214*]

214. TAURINEN had not acquired a domicile, neither in his own nor in another parish, although it is certain that he had a dwelling or residence in some parish. From this, I can conclude that Latin Pettenati had, as it were, a domicile in the parish of Saint Francis of Paola, and therefore the parish priest Centa was able to lawfully and validly assist at their marriage. But how long a period is required for a person to be considered domiciled in a place so that he may contract marriage there? Gury, along with many others, states that a residence of one month is sufficient. And this is confirmed by the declaration of Blessed XIV in a letter to Bishop Groanum, which reads as follows: "In this matter, it can only be answered in this way, that before marriage is contracted, the person contracting the marriage must have resided in the place where the marriage is contracted for at least one month." This rule is not to be understood as if a period of one month constitutes a domicile. For a domicile is not acquired unless there is an intention to reside there for the greater part of the year; but a residence should be held as a temporary abode, by means of which one may presume an intention to establish oneself in that place as a domicile. This presumption has force as long as it is not clearly and openly established that the person has declared that he does not intend to establish a domicile in the place where he resides, or that, in fact, he has transferred his domicile elsewhere, or that his social condition prevents him from being considered domiciled there. But none of these things occurred in our case. There is no evidence that the woman declared that she did not intend to acquire a domicile in the parish of Saint Francis of Paola; rather, the contrary is evident; otherwise, the parish priest Centa could not have been her own parish priest, nor could he have been entitled to assist at her marriage. Furthermore, even if Flessinga had requested him after the marriage, it could not be said that he intended to establish a domicile there. For he knew that her stay with the man's parents would be for a short time, until he had fulfilled the duty demanded of him: after which, she would have to return to her former domicile.

[*Latin ed. p. 215*]

TURIN. 215 Therefore, during that period, he habitually resided in the dwelling he previously had, located in the parish of Saint Francis. No necessity arose for her to change her residence because of the fact that a woman should follow the residence of her husband. Indeed, before the aforemen-

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tioned Appel was sent on the aforementioned mission, he was removed from the list of soldiers and assigned to the Ministry of Foreign Affairs. This office does not abolish the freedom of residence. Finally, when, through the prayers of the same Cavour, he was again accepted into the military, he was not assigned to any specific cohort, but rather generally: "in the 3rd corps of the army with the rank of captain and with the benefit of seniority," so that two years later, while holding that rank, he was able to declare before the municipality that he had established his civil residence in Turin. Therefore, it is clear that the woman, Latina, was free to retain her previous residence. Since it is certain that Latina Pettenati had her residence in the parish of Saint Francis before her marriage; and it is not certain that, after the beginning of her marriage, she established her residence elsewhere, nor was there any necessity for her to do so, I conclude that Latina truly and effectively acquired a semi-domicile in that parish. If this is not admitted, then both would have to be considered among those who are counted as vagrants, namely, those who have abandoned their primary residence and have not yet acquired a new one. This is clearly the case with the man. Indeed, as soon as he arrived in Turin, he was enrolled in the military, but, as they say, in "expectativa;" in this condition, he could not certainly dedicate himself to establishing a residence or quasi-residence; for he knew that he could be called at any moment "to active service," and therefore he would have to report to the place assigned to him by his superiors. In fact, in August, he had to report to the 3rd cohort, which was located there; and, after scarcely fifteen days, he was recalled from there and sent to foreign nations on a mission as an explorer, and he entered into marriage shortly after returning from that journey. Therefore, he lacked a residence or quasi-residence when he celebrated his marriage. The same would have to be said about Latina if it were denied to her a quasi-domicile in the parish of Saint Francis. But who can deny that...

[*Latin ed. p. 216*]

216 TAURINEN. Does any parish priest, with the permission of the Bishop, assist at the marriage of vagrants? Therefore, in this respect, the priest of Centa considered them. But Lewis insists; it is certain that the priest of Centa neither requested nor obtained this permission: for the rescript of the Vicar General contained only a dispensation from three proclamations. But suppose that the priest of Centa assisted at the marriage without any permission from his superiors, as Cavour supposedly did, according to Happel, what then? He would indeed have committed a grave sin, but the marriage would have been valid; St. Alph. on Matrimony, 1089. May it be far from me to accuse the priest of such a grave crime, but I merely wish to demonstrate that a person, whatever his actions, cannot escape the validity of his marriage. Regarding the numerous articles he cites from the Bavarian Code, which concern marriage, I respond generally

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that Christian princes cannot establish impediments except with respect to civil effects; only the Church has the power to establish impediments that either prevent or dissolve marriage. Regarding domicile, note that here we are not speaking of domicile of origin or civil domicile, but of parochial domicile, which is established by actual residence in a particular parish. Finally, he attempts to prove the nullity of his marriage due to a lack of consent: regarding this matter, he affirms that he never intended to take the woman as his wife, but only to keep her as a concubine. Therefore, if he gave his consent, he did so solely under the pressure of Count Cavour. But tell me, when in June you urged the priest of Centa to request permission from the Archbishop to marry you to your Latina, under what authority were you pressured? Absolutely none; but you were solely driven by the burning desire to have her as your wife, and to legitimize the child soon to be born. In this, you are worthy of praise; but this manner of acting completely destroys your assertion that you never intended to take her as your wife.

[*Latin ed. p. 217*]

TURIN. 217. He claimed to have taken that wife, and to have given unwilling consent. Indeed, I infer from this that the desire for this union was vivid and burning within you, judging from the grave danger to which you would have exposed yourself, had things gone well. For you had already entered military service, and you knew that it was forbidden for soldiers, in any rank, to marry without explicit permission from the Minister of War. How then, did you enter into that marriage which you so vehemently opposed beforehand! But, he says, I feigned consent, because I knew that the marriage was null; for the marriage was celebrated on the morning of October 31st, and the decree of dispensation was issued on the same day; therefore, the priest, while assisting at the marriage, had not yet received this decree; therefore, the marriage was null! As if he could not have verbally communicated the dispensation to the priest, and then delivered it in writing to be placed in the parish archive, as is customary. But, he continues, the marriage was null, because the witnesses were chosen randomly from the first people who entered the church, and the contracting parties were completely unknown to them. He cites a canon of the Council of Trent, which prescribes, under penalty of nullity, that the contracting parties and the witnesses must be mutually known to each other. But I am ashamed to recount these things. Therefore, I conclude: 1. That it is not established that the marriage is null in the case of abduction; 2. Nor is it established, at least certainly, by reason of lack of domicile; 3. Nor by reason of lack of consent. THE OPINION OF A CANONIST. The aforementioned marriage, after thirty years, the petitioner is attempting to impugn on three grounds, says the consultant: namely, on the grounds of lack of consent, domicile, and abduction, presenting numerous documents taken from the Austrian

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code, which are not at all relevant to the matter. Having stated these things, the consultant inquired about the validity of the marriage in the aforementioned case, considering the circumstances preceding, accompanying, and following it. And first of all, it is clear from the procedural documents that the petitioner initiated a friendship with Latina Pettenati in the winter of 1859. On May 28th, he went to Italy with her, and took her to Ferrara, from which city, after a few days, Latina departed, going to her lover, Appel, who was staying in Turin.

[*Latin ed. p. 218*]

218 TURIN. It occurred around the middle of June; he received her into his house, and lived with her. The advocate immediately held discussions concerning marriage with the parish priest, Saint Francis of Paula, a theologian named Centa; who, having received the documents from the aforementioned advocate, on June 22, 1860, requested from the episcopal curia the faculty of celebrating the desired marriage. Therefore, from the acts that preceded the marriage, it is shown that the advocate freely willed to enter into marriage with Latina Pettenati. Another argument, no less effective, follows, although it may not appear so at first glance; indeed, the advocate seems to attempt to abuse the situation, in order to demonstrate that his marriage was begun under political pressure, and that the Turin curia did not act freely in granting dispensations from the proclamations, and in granting permission to celebrate the marriage. For the advocate, without coercion, but fully of his own free will, turned to the Count of Cavour; and he did so in order to more easily obtain what he desired, or more clearly, so that the Turin curia, through this very minister, would be more certain of the qualities of those about to be joined in marriage, and would grant permission to celebrate the marriage, and would grant a dispensation from the proclamations. Therefore, from what has been said, it is shown that the advocate freely approached the parish priest Centa, and demonstrated his own will to enter into marriage, having delivered the relevant documents to him, and having freely presented a petition to the curia, through the parish priest; he freely turned to the subalpine minister, in order to more easily obtain what he desired; and finally, what he obtained through this very minister, he freely accepted. Regarding the circumstances surrounding the marriage, the consultant says that it must now be considered. And immediately, a document of great importance is presented to us, namely, the marriage act, duly executed by the parish priest Centa on October 31, 1891. The authenticity of the parish priest's document, which is present in the records, is truly precious and undeniable to no one. For from it, several and effective conclusions are drawn, which demonstrate the validity of the

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marriage.

[*Latin ed. p. 219*]

TURIN. Paragraph 219 most decisively demonstrates the following: 1. That the marital domicile of the couple is located in the city of Turin; 2. That the parish of Centa and the church of Saint Francis of Paula pertain to the couple, or are their proper parish and proper parish; 3. That the marriage was celebrated in this case with the license of the Turin ecclesiastical court and with a dispensation from that same court, after proper announcements; 4. That the aforementioned marriage was initiated with the presence of two witnesses. All of these things are in perfect agreement with canonical regulations, and especially with those things which the Council of Trent established in Session 24, chapter 1, concerning the reform of marriage, with these words: "Those who attempt to contract marriage otherwise than in the presence of a parish priest, or another priest, with the license of that parish priest, or of the Ordinary, and with two, or three witnesses, the Holy Synod declares to be entirely incapable of contracting such a marriage, and declares such contracts to be void and null." It now remains to briefly summarize some of the consequences. And immediately from the proceedings, it is evident that the plaintiff, after thirty years from the celebration of the marriage, brings a suit against a marriage that was properly celebrated. In that long period of time, not only has there been a long-standing cohabitation of the spouses, but also a peaceful relationship between them. Furthermore, the procreation of a numerous offspring confirms this very thing. Indeed, five children were born from their union, of whom the eldest is still living, and is married to Fortunato. To all of these things, the following should rightly be added: 1. From all the documents presented by the plaintiff to challenge his marriage, not one is found from which it appears that there were disagreements, quarrels, hatreds, or other things between the spouses, which could even remotely suggest that they were not true spouses. 2. If the plaintiff was aware, from the celebration of his marriage, of its nullity due to lack of consent, why did he remain completely silent about it for thirty years? Why did he not attempt to challenge it, at least in civil courts, especially in this time of permissiveness? 3. Finally, it seems implausible that the plaintiff would have no knowledge, or could have no knowledge, as he asserts, of his wife being of Latin origin.

[*Latin ed. p. 220*]

220 TURIN. It, too, must be duly heard, so that the truth may shine forth more brightly, and justice may impartially grant to each what is due. We say that the truth may shine forth more brightly when we define "raptus" as "violent abduction of a woman, for the purpose of entering into marriage." It is called "violent" because if there is no force, or if the woman consents, the crime of "raptus" ceases. It is called "abduction," that is, a removal from

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one place to another. Therefore, in the present case, not only was there no physical abduction of the woman, but also no moral abduction, that is, no deceit, trickery, or grave fear. It is established from the records of the case that the woman, Pettenati, was not of good reputation, but lived a free life, and not only was she of age and emancipated from parental authority, being twenty-five years old, but she had also lived separated from her father, and indeed had been abandoned by him. Briefly, it is shown that she herself enticed the man, lived with him in a scandalous manner, bore him a child, came to Italy, and then to Turin, and entered into marriage, all of which absolutely exclude the possibility of "raptus." It must also be noted the final argument by which the man presumes to demonstrate the nullity of his marriage, namely, the lack of a domicile, or quasi-domicile. This assertion is clearly contradicted by the marriage act, in which the spouses are stated to be "Domiciled in Turin;" it is also contradicted by the fact that the man had established Turin as the center of his activities, abandoning all other possessions and activities. Furthermore, this fact continued for a period of five months. The man came to Turin on May 31, 1860, and the marriage was celebrated on October 31 of the same year. If he intended to demonstrate a quasi-domicile, then, according to Benedict XIV, a period of even one month would have been sufficient. It seems necessary to add something, so that it may be clear what is required to acquire a quasi-domicile. But in this matter, the only response is that before the marriage is contracted, the person contracting the marriage must have resided in the place where the marriage is celebrated for at least one month.

[*Latin ed. p. 221*]

TURIN. 221. The matter is discussed near Fagnano concerning parishes. > Since a true residence, or quasi-domicile, must be established not only by fact, but also by intention, and since the intention of the person establishing it is hidden from us in this matter, we say: granted, and without prejudice to the fact that the person does not have a true residence, or quasi-domicile in Turin, what would follow? It would undoubtedly follow that he must be considered as a vagrant or wanderer. "For he is called a vagrant, or wanderer, who has no certain, stable dwelling, or true, or quasi-domicile of residence; but he wanders about, either having abandoned his former residence, or quasi-domicile, in search of another; or whether he has already determined where he will establish his residence, or not; for anyone is truly a vagrant, and is called a vagrant, until he actually obtains a residence elsewhere: see Reiffenstuel, L. 4, t. 3, par. 2, n. 86. The reason is that when such a person has truly abandoned his former residence, as is presumed, but has not yet actually obtained another, he is truly without a residence, and therefore a vagrant. It does not matter that he has already resolved in his mind where he intends to establish his residence, because a residence is established not only by intention of the mind, but also by fact.

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L. Domicilium, ff. ad municipalem. - Therefore, it follows that he who truly leaves his domicile or place of residence with the intention of establishing a residence elsewhere, is, from the very first day he leaves, a vagrant, even though it is certainly known where he was born, and where his parents still reside. > Sánchez De matrim., I, 3, disput. 6, n. 8. Reiffenstuel, loc. cit. The doctrine presented thus far is clearly verified in the present case, as is evident from the reading of all the procedural acts. Therefore, for the sake of brevity, let us see who is the parish priest of vagrants. On this matter, the common opinion of the canonists is prompt and precise, expressed in the following words: "The proper parish priest of vagrants, in matters relating to marriage, is the parish priest of the place where the vagrants are actually present." Reiffenstuel, I, 3, Decret., tit. 3, n. 88, where Sánchez, Guttierez, Pontius, Pirrhing, Bosco, and others are cited. "The reason is that these people also must have a proper pastor; but another is more fitting..."

[*Latin ed. p. 222*]

222. TAURINEN. It is not permissible for a parish priest in whose jurisdiction a marriage takes place to refuse to perform it, since it is through him that other sacraments are also administered; therefore. Several declarations of Cardinals are added, as cited by Pontius in the aforementioned passage. "It is understood that any parish priest, that is, any parish priest in the place where the marriage takes place, is to perform it; therefore, wandering individuals can approach any parish priest of any parish to assist them in their marriages, provided that, according to the disposition of the Council of Trent, Session 24, De reform. matrim., chapter 7, for the validity of the marriage, 'they first diligently inquire about them, and after the inquiry is completed, they refer the matter to the Ordinary, and obtain permission from him.' I have said 'for the validity of the marriage,' because the common opinion of canonists teaches that the marriage of wandering individuals is valid, even if a parish priest assists them without a prior inquiry and permission from the Ordinary. The reason is that the essential and necessary requirements for marriage are present; furthermore, the Council did not append a clause to its law that would invalidate it; and marriages that are invalid only because they violate a simple law without such an invalidating clause, remain valid." Reiffenstuel, L. 4, title 3, n. 92. However, it is the concordant opinion of theologians and canonists that a parish priest who assists in the marriage of wandering individuals without a prior inquiry and permission from the Ordinary, sins mortally; because he acts against an ecclesiastical precept in a very serious matter. Therefore, it is evident from what has been said above and from the premises, that the validity of the marriage holds true, whether the spouses are considered to have a true or quasi-domiciliary residence, or whether they are considered wandering individuals. Indeed, all that is required by the Council of Trent is found in this case, namely, a parish priest, witnesses, and permission

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from the Ordinary. Therefore, considering everything that has been said so far, it cannot be challenged in any respect. Having considered all of these things, it seems that the conclusion to be reached is that the asserted nullity of the marriage does not hold, but rather, the validity of the marriage should be upheld.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE FROM THE OFFICE. The marriage, which, in the year 1860, on October 31, Ludovicus vicus Appel, aged 25, contracted with Latina Pettenati, aged 24, in Fermo, is so firm that, after what has been learned and argued with great learning and erudition by the most learned consultants...

[*Latin ed. p. 223*]

TAURINEN. 223. A theologian and canonist, it is believed that the Fathers of the moral theology commission were delayed by certain observations from Brno. Considering these and other observations, the matter under consideration was whether a doubt existed regarding the nullity of a marriage in a particular case.

RESOLUTION. The Sacred Congregation, after discussing the matter on July 25, 1891, decided to respond: Negatively.

FROM WHICH ARE DERIVED THE FOLLOWING POINTS:

I. A domicile, in relation to a parish, for the purpose of contracting marriage, is acquired by the one who has resided in the place where the marriage is to be celebrated for a period of one month; provided, however, that he intends to remain there for the greater part of the year.

II. A "vagus" is one who has truly abandoned his previous domicile and, in fact, has no other domicile; although he may intend to establish his domicile elsewhere: because a domicile is established not only by intention, but also by fact and reality.

III. The proper parish of a "vagus" is any parish in the place where he is actually residing.

IV. The parish priest, before proceeding to join a "vagus" in marriage, must make an inquiry, refer the matter to the Ordinary, and obtain permission from him.

V. However, marriages of "vagi" are valid, even if the parish priest has not made an inquiry beforehand, nor obtained permission from the Ordinary: because the essential elements for marriage are present, and the Council of Trent did not include in its law a clause that would invalidate such marriages.

VI. "Raptus" is the violent abduction of a woman, for the purpose of entering into marriage; therefore, unless the woman is forcibly, without her consent, transported from one place to another, "raptus" does not con-

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stitute a impediment that invalidates the marriage.

VII. Therefore, it cannot be established that "raptus" was present in the case, which would have rendered the marriage invalid; the celebration of this sacrament was attended by the proper parish priest, and whether the contracting parties are considered as "vagi" or as having a domicile, it is irrelevant.

[*Latin ed. p. 224*]

224 UDINE. OF THE DEANERY AND THE UNION. July 25, 1891. Session 25, chapter 12, Concerning reforms. SUMMARY OF FACTS. The villages and rural districts, which over time were incorporated into the city of Udine, were originally subject to the church of Saint Mary of the Castle, as the sole parish of that region. But when, after the destruction of Aquileia, the population in the surrounding plain increased, and the old church was located in an unsafe place, it was deemed appropriate to transfer the care of souls to the new church of Saint Odoric. With the Apostolic permission, the Patriarchs of Aquileia, concerned about the growth of the temple, near which they had established their residence, and wishing to promote both its splendor and the good of the people, carried this out. Patriarch Bertrand, worthy of special mention among others, on December 24, 1334, united the church of Saint Mary of the Castle with the church of Saint Odoric, along with its prebend and all its rights and appurtenances, and elevated it to the dignity of a collegiate church. He ordered that the Dean of that collegiate church should have the care of souls and be the head of the chapter. The general vicar of the Patriarch, in the year 1446, established that the chaplains of the three chapels of the city of Udine should have the care of the people, immediately upon receiving their appointment through the Dean or the chapter. After the decrees of the Holy Council of Trent were promulgated, Patriarch Grimani, concerned about their execution, wished to divide the city into distinct parishes, and he negotiated this matter with the civil authorities. However, since he was unable to achieve his desired outcome, his successor, Francis Barbaro, on January 20, 1575, completed what he had intended. He divided the entire city into eight parishes. He also stipulated that those who were to have the care of souls should not exceed the established limits. He also established that the parochial rights should be...

[*Latin ed. p. 225*]

UDINE. With 225 parishes, and with the intention that each and every one of them, established by its own decree, and the pastors who hold or will hold the parish offices, should remain entire, unblemished, and safe, and that none of them, nor any of their rights, should be diminished or violated by any abuse, license, or pretext of past or present times. This decree was promulgated by the patriarchal chancellor before the dean and

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canons of Udine, and is followed by a document in which the boundaries of each parish are assigned. After these events, on July 7, 1597, the chapter of Udine convened before the same Patriarch Barbaro, who stated that after the aforementioned decree, "some of the pastors or chaplains were not, as was customary, receiving [benefits] from that chapter." On October 14 of the following year, Barbaro, responding and considering the request to be readily granted, decreed that the aforementioned pastors of that city should be sent to the same chapter to receive their investiture. But he stated that it was against the law and practice for the chapter to grant a license to exercise the care of souls; that this matter pertains solely to the Patriarch. Meanwhile, the parish church of St. Peter in Burgo of Aquileia being vacant, the chapter requested that a chaplain be appointed to exercise the care of souls until a suitable pastor could be provided. Then, in the name of the same Patriarch Barbaro, the chapter was notified to provide the aforementioned church with a suitable pastor within ten days, provided that he accept the tithes or quarter-securities from the lands of that church. Subsequently, for some time, matters seemed to proceed peacefully, and the chapter appeared to have used its right to invest pastors, until the year 1680. It should be noted that after the year 1684, some provisions for parishes were found, in which the canonical institution was conferred on the elected without the intervention of the chapter, and furthermore, it was stated that they were to be subject to the Patriarch in all matters of collation. However, in the year 1728, the chapter appeared before Patriarch Delphino and asserted its rights; who responded that it was necessary to adhere to the decree of Patriarch Barbaro regarding the provision of the parish churches of this city, which was to be made by the chapter of Udine. Acts, Vol. XXIV, page CGLXXX, 15.

[*Latin ed. p. 226*]

226 UDINE. However, not long after the controversies subsided, they were renewed. The parish priests did not miss any opportunity to complain, seeking to have at least a portion of the tithes assigned to them, a matter which arose particularly from petitions and disputes in the years 1796 and 1843, before both civil and ecclesiastical authorities, although without success. Meanwhile, the Chapter, which had been elevated with the honors of an archiepiscopal church after the suppression of the Aquileia patriarchate in 1753, repeatedly opposed the parish priests, and maintained its rights regarding the collation of benefices and the tithes. Finally, secular disputes were again stirred up a few years ago, when the parish priests brought a lawsuit before the Archiepiscopal Court, requesting that the right to collect a quarter of the tithes be granted to them within their respective territories, or, if not, at least the value thereof. The Chapter then opposed this action in the course of the litigation, and requested that the tribunal, by its judgment, declare that the urban parishes of Udine were united to the Chapter of

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the metropolitan church, and were in no way dismembered from it. The Archbishop, after a process concluded by appointed judges, issued a judgment, declaring the canon lawyers representing the Chapter of Udine to be absolved from the petition made by them, in their own name, and in the name of other parish priests; and declaring that the parishes of the city of Udine were united to the Chapter of the metropolitan church. The parish priests then appealed this judgment to the Sacred Congregation of Councils.

A Synopsis: The defender of the parish priests, in his opening address, spoke of the union, and recalled the objection made by the Chapter, which could not be admitted either on the grounds of jurisdiction, nor on the grounds of matricity or subjection. Indeed, if something of that kind is admitted to have existed in the past, with the Apostolic Constitution "Suprema dispositione" of Benedict XIV, dated January 19, 1753, the collegiate church of Saint

[*Latin ed. p. 227*]

UTINEN. 227. When a church, whether a greater church or a cathedral, has been elevated "with all rights, preeminences, and privileges," a change in status occurs; a new order is established with new rights, and ancient privileges, if any existed, are extinguished, as expressly stated in the Rota, Decree 313, paragraphs 4 and following, total record. "For it is monstrous that one body should have two heads..." And Pitonius, in *Discipline Ecclesiastica*, 9, paragraph 38, states: "By the suppression of the former status, all vestiges of pretended subjection are completely removed, as if the church had never been subject, according to authorities, etc., since it is contrary to law that that which is newly created should have anything in common with that which is extinguished and annihilated: Gonzalez, etc." However, the canonists argue that, from the very foundation of churches, the power to institute and to dismiss [clergy] has been reserved, which pertains almost to jurisdiction. To this, the author responds, first, citing Sabellio, *De Reservatio*, paragraph 3, and the Rota, Decree 411, paragraph 17, paragraph 13 of the record, and *Ravennaten*, regarding the inheritance of property, January 21, 1771, § ultimate, correction of Veri. "This reservation does not prove a credit, and it remains void as long as the preserved right is not established by certain and clear documents." Furthermore, after such foundations, the church of Saint Mary was, in the year 1334, elevated to the dignity of a collegiate church by a patriarchal decree from the prelate Bertrand, in which it is written: "So that we may not seem to neglect the care of the people... there shall be one perpetual vicar, who shall be instituted and dismissed by us and our successors... The other presbyters, titulars or belonging to the aforementioned churches, shall remain with the people and the churches in their former rights, the institution and dismissal of whom we also reserve to ourselves and our successors." And rightly so: for,

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according to the doctrine stated above, when a church attains the honor of being a collegiate church, it also loses the lesser dignity of being a mother church; and when the status changes, the rights change, and the effects change. See the Sacred Rota, Decree 1445, paragraphs 3 and 7, correction of Seraphino. But here, the opponents deny the very dismemberment of parishes, claiming that the care [of the parish] has always been in the name of the chapter.

[*Latin ed. p. 228*]

228. It is stated: In the patriarchal decree, nothing else is seen than the simple distinction of parishes, without that the ancient union should be weakened. Moreover, it is also noted that this distinction of parishes was made by the Patriarch, according to a law, so that the pastors should be perpetual and titular; so that all should have equal power, and that all rights pertaining to all pastors should belong to them (which all clearly demonstrate a proper and evident separation). The author observes that this very fact reveals the cause and significance of the decree's dismemberment. Indeed, the cause was: because grave evils arose from the fact that vicars, priests without jurisdiction, were administering the care of almost the entire province. Hence, at first, the Patriarch entrusted parochial duties to three priests, "lest so great a multitude of people be neglected in its care." But, with the evil still increasing, the Patriarch Grimani decided to define as many parishes as possible, especially urged by the recent decree of Trent. However, the Patriarch of Aquileia, Barbarus, through his decree, put this into effect, establishing eight parishes, dividing the entire city into eight parts, that is, into eight parishes; so that each one would be contained within its own defined boundaries, and no one would dare to transgress or confuse the boundaries of the parish, except in a case of necessity. The Patriarch intended that the parochial rights belong to each parish, and to each one individually, completely and intact. Therefore, it is clear from the aforementioned decree that it concerns a true and proper dismemberment, and not a simple distinction between parishes, which did not exist before, but were established only through dismemberment from the one ancient entity. It is objected that the Patriarch neglected the form prescribed by law: because a serious cause for dismemberment must be legitimately proven, and the ancient church authorities and the chapter of the cathedral church should be heard. To this, after the passage of three centuries, the author responds, citing Barbosa, *De Paroc. par.*, 3, cap. 28, § 2, n. 16: "Although an external solemnity, such as the intervention of..."

[*Latin ed. p. 229*]

UTINEN. 229 And while necessary causes are not presumed *a priori*, yet, with the passage of time, they are necessarily presumed. After these remarks, the advocate proceeds to refute another part of the opposing argu-

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ment, namely, the right which it claims – the right of the chapter, within the province of the episcopal jurisdiction, to institute vicars in all parishes; and he contends that this claim had already been rejected since the year 1597, by a decree of October 14th, when only the right of simple investiture had been granted, as a token and proof of its status. And rightly so, for the authorized institution, of which we are speaking, consists "in the license which, after a preliminary examination, is granted by the bishop to administer the sacraments to those subject to him." Rota dec. 158 cor. Motines. But this can belong to no one, unless he possesses a jurisdiction almost episcopal, or a special apostolic privilege. Nor would this union, which the chapter claims, benefit it, even if it were clear; Schmalzgrueber, lib. 3, tit. 7, § 41. Nor do the canons benefit it, for it was added, at the very foundation of the churches, that the institution belonged to the chapter. Indeed, even if this were true, the patron responds, with the same Schmalzgrueber, loc. cit., § 45, "that in such a benefice, the bishop can still claim the authorized institution; and consequently, that condition added at the foundation is considered as not added." The reason is that the founder, being a private individual, cannot alter the disposition of the sacred canons, nor establish anything contrary to them. Finally, the chapter appeals to custom and prescription. But, whatever may have been the case before the Council of Trent, it is certain that, after this holy Synod, these customs, according to the patron, were completely and utterly abolished; De Angelis, Praelect. iur. canon., lib. 3, tit. 7, § 4. As for the right to collect tithes, the patron states that it is certain that the Patriarch Barbaro, in the aforementioned decree of division, declared that all the rights of the parishes were "entire, uninjured, and preserved."

[*Latin ed. p. 230*]

230 UTINEN. He wished. Indeed, jurisprudence dictates that a parish priest has a legal presumption of the right to receive tithes from land within the boundaries of his parish, as stated by Van-Espen in *Jus eccl. univ.*, part 2, section 4, title 2, number 9. And even more so if we are speaking of sacramental tithes, that is, those which are due by reason of and by title of pastoral care; for it is the established teaching that these belong entirely to the parish priest of the church in which the sacraments are administered. See *Rota dec.*, 27, number 3, part 14, and *dec.* 124, number 7, paragraph 5, volume 1, *Rec.*. And this is so even if the parishes are separated from the mother church; for they "always have a valid claim regarding tithes, even against the mother church, to which the tithes were previously owed," as stated in *Rota dec.*, 682, paragraph 3, *Rec.*, number 1, and more clearly in *dec.* 178, paragraph 1, *Rec.*, number 5. It is wrongly objected by the canons that certain boundaries were not established in the decree of division; whereas this is contrary to the truth, as the patron demonstrates; for not only did the Archbishop of Aquileia add

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a note to the decree, "polizza dei confini di parrocchia" (a document defining the boundaries of the parish), but the chapter dean himself ordered that the aforementioned decree be observed, "since his Most Illustrious Lordship has established and defined the parishes in this city of Utinen with their respective boundaries." However, the opponents insist, arguing that, by common law, in a division, the entire tithe of the mother church is reserved for the territory, unless it is otherwise established. To this, the patron responds, distinguishing between customary tithes and new tithes, which are due to the parish priests who exercise pastoral care in a particular place. For, as Alexander IX states in chapter 2, § final, of *De decimis* in 6, "although the collection of tithes in a certain parish may historically belong to the chapter or monastery, no right extends to the new tithes." Also, VanEspen, in the aforementioned location, number 45 and following, and *Rota dec.*, 178, part 1, *Rec.*, number 2. Indeed, even if the chapter enjoyed the broadest privilege of collecting tithes everywhere, such a concession could never extend to new tithes, as testified by Schmalzgrueber, *lib.* 3, title 30, § 48. This concerns new tithes. As for the other tithes, or quarter-

[*Latin ed. p. 231*]

It is understood that, whatever the writers may think, as the advocate notes, both right reason and equity suggest that, having been burdened with expenses shared with others, a portion of the remuneration for labor should also be divided. Furthermore, he states that it is established in law that, when the mother church consents to the division, it is considered to tacitly admit even the diversion of the tithes, as Rebbuflus, Moneta, and R. Rota state in Barbosa, *De Officiis Parochi*, part 3, chapter 28, section 2, number 7: "A new parish, with the consent of the mother church, will have the tithes that would otherwise belong to the old parish, even if this were not explicitly provided for in the new establishment." It is clear from the fact that the dean of the chapter ordered the decree of erection to be observed that the canons of the city have given their consent to the establishment of new parishes, and that without any condition. The question, however, is more one of fact than of law, and therefore, by investigating the mind of the Patriarch, we see that he ordered that "temporal goods be given to the church, so that spiritual ministrations may be received." The advocate continues, stating that the chapter improperly invokes a prescription of three centuries in its favor. Indeed, a prescription is valid only if there is legitimate, continuous, and uninterrupted possession; as De Angelis states in *Praelectiones Iuris Canonici*, book 2, title 26. Furthermore, where tithes are concerned, an ancient and well-established custom is required, either for forty years with title and good faith, as is derived from chapter 1 of *De Praescriptione*, section 6. The advocate demonstrates that none of these things favor the chapter; indeed, the aforementioned period of time has passed not peacefully, but in perpetual contention. Moreover, he states

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that, from the year 1732 to the year 1795, the pastors did nothing, and that this was because the secular power, by its authority and under threat of penalties, forbade the pastors from taking any action. Therefore, this time does not run in favor of the chapter for the purpose of prescription, according to the well-known principle in I. 1 fin. *De Annalibus*, exception: "Prescription does not apply against an impediment and against one who is unable to act." Indeed, as soon as the pastors had the opportunity to speak, they presented a petition to the Duke of Venice, stating: "re-

[*Latin ed. p. 232*]

232. "Thus, I am suspended, awaiting the outcome of this matter," and consequently, a new trial has been instituted, the result of which is unknown. Nevertheless, at the beginning of this century, the patron claims that the parish priests have been in possession of the tithes. For, when the Chapter attempted to introduce new regulations in the year 1834, the parish priest of the church of Saint Mary of Gratias vehemently resisted; and fourteen witnesses then testified that they had willingly paid a quarter of their produce annually to the present parish priest and to his predecessor. But despite all this, and even though the Patriarch did not intend to assign a proper portion of the fruits belonging to the mother church to the new churches, according to the law of Trent, chapter 4, session 21, concerning ecclesiastical reforms, which he himself professed to uphold, the patron insists that what he did not do then, must be done now, because the matter falls under another decree of the same Council of Trent, in which, speaking of already established parishes, it is prescribed that parish priests who do not have a proper livelihood should be provided with one, especially "through the assignment of tithes," chapter 13, session 24, concerning ecclesiastical reforms. And here, the advocate paints a picture of the difficult and burdensome condition of the parish priests, who, burdened by the care of many thousands of souls, in a vast territory, often extending through fields or mountains, are completely lacking in all support.

DEFENSE OF THE CHAPTER. The patron of the Chapter, proceeding with the opposite disposition, first established his argument regarding the collection of the quarter-tithe, or tithes. He recounts that the church of the Blessed Virgin Mary Major received the entire quarter-tithe of the old parish of Saint Mary Major of Castro, and that it has used this collection even after the distribution of parishes made by Patriarch Barbaro, until the present time. Therefore, he argues, it is unjust to prevent the parish priests from receiving this, considering the exception to the prescription, which even applies against those with a well-founded intention, according to several decisions of the Holy Roman Church on the matter of tithes, as recorded in "Decimae quoad praescriptionem" (Tithes concerning pre-

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scription).

[*Latin ed. p. 233*]

UDINE. 233 He maintains that the prescription was not interrupted by a judgment rendered before the Ducal authority of Venice; either because the judgment itself, initiated almost twenty years after the erection of the parishes, was finally decided in favor of the Chapter, and the dispute, in which the possessor prevailed, does not interrupt the prescription, as stated by De Luca, *De Decimis*, book 6, number 23; or because prescription does not cease due to actions before an incompetent judge: *Decisiones Recentiores*, decision 99, number 18, page 8. Furthermore, a lay judge is incompetent to judge matters concerning tithes, as stated in *Decisiones Recentes*, decision 297, numbers 6 and 8, part 14, and decision 284, number 10, part 10. Moreover, he observes that, according to established jurisprudence, tithes are presumed to be reserved to the mother church; and that a filial church erected within the territory of the mother church, in its separation, does not deprive the mother church of the right to receive tithes, nor of the enjoyment of parochial rights, unless this has been sanctioned by one who has the authority to do so, nor is the mother church required to prove that the tithes belong to it, when it has a well-founded intention to that effect, as is most clearly evident in De Luca, *De Decimis*, book 12. This has also been affirmed on several occasions by the Holy Roman Church, as in *Decisiones Recentes*, decision 315, number 2, page 12; decision 577, number 2, page 5, volume 2; decision 607, number 4, page, volume 1; and by the Sacred Congregation [of Rites] in the year 1617. Therefore, according to the advocate, the matter is one of fact rather than of law, and the entire question lies in determining what was decreed by Patriarch Barbaro concerning the *quartesium*. Indeed, as the judgment of the Udine court noted, the decree of Patriarch Barbaro did not establish anything concerning the *quartesium*, but rather, since it does not divide the external, titheable territory among the auxiliary churches, it implicitly confirms the rights of the Chapter. Furthermore, it is stated that the Chapter, even after the decree of Barbaro and until the present time, has always collected the *quartesium*, and that this long-standing practice, which has lasted for over a hundred years, even if we refer to the year 1798, has not only the force of prescription but also an interpretative force. Moreover, the Patriarch himself, in another decree dated November 28, 1597, affirmed that the *quartesium* was to be collected by the Chapter. He considers that there is no just cause by which the Patriarch...

[*Latin ed. p. 234*]

234. He endeavors to show that the tithes could be diverted from the mother church, provided that the filial churches were adequately endowed, and that the true establishment of new parishes was not achieved through

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the suppression of a single, previously existing parish, as the opponents contend. To support his counter-claim, he argues that the parish churches involved in the dispute are united with the chapter, and therefore are not properly filial churches, but rather auxiliary and members of the metropolitan church itself, and that their rectors are not truly pastors, but merely vicars. He points out that the sole argument upon which the vicars rely is the interpretation of the decree of Patriarch Barbaro in the year 1595, which, however, considering the circumstances that preceded or accompanied it, must be interpreted accordingly. He notes that it is a matter of record, and is proven by irrefutable documents, that these same auxiliary churches, which are listed in the Patriarch's decree, existed for many years before the decree of Patriarch Barbaro, and that in these churches, all parochial functions were administered indiscriminately, without any distinction of territory. Therefore, he argues, since the ancient parish never ceased to exist, and has continued uninterruptedly from its original foundation to the present day, it follows, according to the proponent, that the chapter, in other auxiliary churches, united to its chapter table, still possesses the right and the power. Nor do the opponents devise a better argument to undermine this. They claim that the decree of January 20, 1595, should rather be referred to chapter 4 of session 21 of the Council of Trent, than to chapter 13 of session 21, that is, not to the establishment of new parishes, but to the demarcation of parochial boundaries. In the narrative portion, it is not inquired whether the citizens, due to the distance of the place or the difficulty, cannot access the sacraments and divine services without great inconvenience, but rather that the parochial churches do not have defined boundaries, and that their rectors do not have a specific flock, but minister to all who request the sacraments. In the dispositive portion, it does not decree that new parishes should be established, but...

[*Latin ed. p. 235*]

UTINEN. 235. It is necessary to establish the distribution and division of parishes, and it is commanded to pastors, vicars, and priests of any rank who exercise the care of souls, that they confine themselves to their assigned territories. Therefore, the schedule appended to the decree bears only this title: <"Boundary Agreement of the Parishes." > According to the Advocate, no word of dismemberment or new erection is found, which reveals the Patriarch's intention and demonstrates a lack of solemnity. Furthermore, it is noted that dismemberment implies a true alienation, and therefore requires the conjunction of solemnity and a just cause, according to De Luca, *De Beneficiis Ecclesiasticis*, 25, no. 6. Just causes for the dismemberment of a parish church are necessity and evident utility, which are derived from the distance of places, which must be such that it causes inconvenience to the access of the parishioners, *Dec. Recent*, dec. 224, no. 6 and 8, part 10; 578, no. 2, 8, part 19, d. 2; 204, no. 1, part 17; 484, no. 3, p.

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1. Dismemberment is not permitted whenever the well-being of the parishioners is otherwise considered, for example, when the sacraments can be conveniently administered in a certain church by a delegated priest; *Tonduto, Quaestiones et Resolutiones Ecclesiasticas*, V, 1, cap. 56, no. 7 and 8; Ricci, *In Praxi Rerum Foranecclesiasticarum*, decis. 544, no. 6; Mevoch, *Consilia*, 477, no. 9; *Costituzioni de Subsidio et Remediis*, 75, no. 20; *Decis. Recent*, decis. 578, no. 5 and 8. Moreover, from the aforementioned account of the facts, it is believed that there was no just cause for dismemberment due to necessity or evident utility, since it is known that there were many auxiliary churches in which the sacraments were administered and divine services were performed. Furthermore, it is stated that the consent of the rector is a very important argument for a just cause regarding the dismemberment of a parish, so that if it is lacking, the dismemberment is invalid, and in the case of a vacancy, a defender of the church must be appointed by the Bishop. However, it is believed that the consent given by the Chapter was not for the dismemberment of the parish, but for the distinction and designation of boundaries, with the condition "that..."

[*Latin ed. p. 236*]

236 UDINE. Through the aforementioned distinction, no prejudice whatsoever shall ever arise, either concerning the collation [of benefices], or with regard to any other of its prerogatives which it has always possessed and continues to possess from time immemorial. The advocate believes that these arguments add strength to his case, given the confession of the opposing party. He presents evidence from which it can be seen that vicars curates, in a synodal examination in the year 1660, affirmed that their churches were subject to the Chapter, and in the year 1683, in a certain agreement concerning funeral rights, they generally acknowledged their subjection. Finally, he argues that the subjection of the church benefices is proven by long-standing practice, which has continued uninterrupted from the decree of the year 1595 until the present time. With these considerations in mind, the question was posed: Whether the judgment of the archiepiscopal court of Udine should be confirmed or overturned in this case. RESOLUTION. The Sacred Congregation, after deliberation on July 25, 1891, decided to respond: The judgment should be confirmed, and with the following understanding: That, considering the obligation of the Chapter to provide rectors for the churches with a suitable provision for their honest sustenance, the Archbishop should report on the state of the *quartesii* and *novalium*. (1) (1) *Quartese* is a certain lesser tithe. *Novale* is a field newly brought under cultivation; there is no record that it had ever been cultivated before. - *Eccles. Acta* Vol. I, 619, Vol. VII, 387,

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Vol. IX, 388, Vol. X, 542, Vol. XVII, 31. 243.

[*Latin ed. p. 237*]

237 OXFORD MEN. ON DISTRIBUTION AND SUBSTITUTION. July 25, 1891. Session 21, Chapter 21, Concerning Reforms. In the Cathedral Church of Oxford, the canons, who are also charged with the duty of teaching clerics in the diocesan seminary, were formerly accustomed to be present in the choir, either in the morning or in the evening, in order to benefit from the daily distributions, as they would present themselves before or after midday to impart instruction. However, this practice, the duration of which is not clearly established, was deemed to lack a legal foundation by the Chapter; and therefore, with the authorization of the Bishop, it was abolished at a meeting on January 26, 1886, with the decree that the aforementioned canons, if they did not attend the choir, would lose their distributions, provided that they held a reading at a designated hour. This was not pleasing to Isidoro Soto Ramos, who had been giving a doctoral lecture there for seven years, and who, therefore, appealed to the Sacred Congregation of the Council. He seized this opportunity to request a resolution on another matter as well. For at the same time, he considered it to be an obligation, which seemed to him to be contrary to law, that which was expressed in the edict concerning the competition for the doctoral lectureship, namely, that the elected candidate, even if, due to illness, he should sometimes have to be absent from school, must provide someone to substitute for him at his own expense. Therefore, he inquired about two matters simultaneously: "1. Whether he has the right to be present in the choir in the same manner as before, or in previous years. 2. Whether, if, due to illness, he is unable to give the lecture himself, he is obligated to provide a substitute at his own expense." When asked about the custom, the Bishop, after hearing the Chapter, issued a vote entirely contrary to that of the speaker, adding reasons by which he sought to defend his opinion. SUMMARY OF THE CASE.

[*Latin ed. p. 238*]

238. OXOMEN. A Sylloge of Decrees. Firstly, concerning the distinction of canonries in Hispania, the concordat of the year 1851 contains article 13: "Each Cathedral Church shall have a chapter consisting of a dean, who shall always hold the first seat after the pontifical, four dignitaries, namely, the archpriest, the archdeacon, the cantor, and the prefect of the school, as well as another treasurer in the metropolitan sees; in addition, there shall be four canons who are designated by their office, namely, the magisterial, the doctoral, the lectoral, and the penitential, and finally, a number of canons by grace, as defined by article 17." And concerning their stipends, article 32 states: "The dignitaries and canons by office shall enjoy an annual income of 16,000 *regalia* in the metropolitan sees, 14,000 in the suffragan sees, and

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8,000 for the canons by office in collegiate churches. The remaining canons shall receive 14,000 in the metropolitan churches, 12,000 in the suffragan churches, and 6,600 in the collegiate churches." The principal duty of the doctoral and magisterial canons is explained as follows in the provincial council of Salamanca, long before the concordat, in Act 2, decree 35: "He who holds the doctoral stipend shall be obliged in all matters pertaining to the cathedral to give his opinion, either verbally or in writing, as may be required, and to defend it. He shall also be obliged in cases that pertain to the episcopal dignity, provided that they are not disputed between the chapter and the bishop; in such cases, it will be more fitting for him to be present with his chapter. Furthermore, when requested by the bishop or the chapter, he shall be obliged to attend the civil court of the diocese, to give verbal or written testimony in matters concerning the bishop or the chapter, as may be necessary, without any excuse, although this may be required only in urgent necessity, and all of this gratuitously. But he who holds the magisterial stipend shall be obliged on all those days to preach to the people, which are prescribed either by the statutes of the church or by ancient custom, and when, for a reasonable cause occurring in the church, the bishop requires it, he shall preach." *THESE SEEM TO FAVOR THE DOCTORAL CANON.*

[*Latin ed. p. 239*]

OXOMËN. 239 cathedrali, seu si alii in eodem urbe peculiariter ei mandatum fuerit. "Praeterea, ad hoc primarium officium, aliud Episcopo addi potest, nempe docendi in Seminario dioecesano, per virtutem decreti regii anni 1852. Nulla expressa dispositio iuris adest quae canonicorum officium, quod ad punctum controversiae praesentis pertinet, respiciat. Concilium Tridentinum, praeter canonicum penitentiarium et parrochum, probabiliter nec docentes Sacrae Scripturae, tamquam praesentibus in choro, habet ad effectum lucrandi distributiones quotidianas. Hoc autem beneficium tantum postea ad canonicum theologum extensum est, ut patet ex pluribus Sacrae Congregationis Consiliorum resolutionibus aliter relatis. Verum est, non levia argumenta favorem canonicorum ex officio congruentiae, sive ex paritate conditionis, sive ex aequitate, praestabant. Communiter enim receptum est, ut quando agatur de 'onere inseparabiliter praebendae adnexum, quodque sine peculiari mercede exercetur, tamquam pars choralis officii spectari soleat. In cuius sententiae confirmationem, forsan non omnino absonum videretur recentem Sacrae Congregationis Consilii decisionem adducere in Carthaginen, die 11 Aprilis nuper elapsi, (1) in qua canonico theologo munus magistri in Seminario exercenti vetitum fuit chorales distributiones percipere diebus quibus docet, cum ad hoc distincta pensione rependeretur. Quod clarius etiam eruitur ex Piacentina, die 17 Iunii 1882, in qua proposito dubio: "An canonicus magistralis, pro munere quod in Seminario exercet, ius

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habeat percipiendi emolumentum, vel potius distributiones quotidianas tantum lucrari debeat in casu," responsum datum fuit "Negative ad primam partem, affirmative ad secundam." (2) Nec in themate regerere valet quod orator "hora distincta a canonicis lectionem habeat." Nam omisso quod hoc est quid temporaneum, quod decursu temporis mutari potest, adnotandum est canonico doctorali, lectionibus et servitio (1) Hoc volumine pag. 72. (2) Recueil, Vol. XV, 208.

[*Latin ed. p. 240*]

240. Those who spend a large part of the day on choral duties and necessary journeys may find it difficult to find the time and strength to dedicate themselves to proper preparation. Therefore, if the strictness of the law were enforced, there would be reason to fear that the students might suffer some detriment. Regarding the larger stipends granted to canons with doctoral degrees, which the Bishop perhaps mentions as a reason for denying grace, if these stipends were to be withheld, it could be observed that the arguments in favor of this seem to be very strong. For since these benefits are entirely the same for a theologian and a penitentiary, the same reasoning could be invoked to deprive them of these distributions as well. Furthermore, since the larger stipend for canons established by office was instituted in article 32 of the Concordat of 1851, and the duty of teaching was subsequently imposed by a regional decree of the year 1852, it is evident that a conclusive reason cannot be derived from this. Regarding the obligation to provide someone at their own expense to exercise the teaching function whenever they are detained by illness, the speaker recalls that this is contrary to the rule in title 12, book 3: "Ecclesiastical benefices are conferred without diminution." Therefore, if the Bishop has added a condition in the edicts that goes beyond the law, and that which is contrary to the law must be considered null and void, then the canon with a doctoral degree cannot in any way be bound to fulfill a grave and vitiated condition.

WHAT APPEARS TO BE OPPOSED TO THE CANON WITH A DOCTORAL DEGREE.

However, it must be considered that the words of the Council of Trent, session 21, chapter 12, on reform, are very clear: "Those who have been absent during the prescribed hours shall receive the distributions; the others, without any collusion or remission, shall be deprived of these, according to the decree of Boniface VIII, which begins: 'It must be decreed'; which the Holy Synod restores to use, notwithstanding any statutes or customs." Therefore, unless the case is expressly excepted by law, in the present matter, one cannot proceed with arguments derived from analogy or from equity. It seems that the Holy Congregation of the Council has always been

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strict in granting daily distributions to those who are absent.

[*Latin ed. p. 241*]

OXOMEN. 241 In such a case, the canon doctor cannot invoke any exception favorable to him. On the contrary, the opposite is entirely derived from the Apostolic Briefs of the Spanish Nuncius, concerning assistance in the choir: by law, no exemption applies to a canon doctor from the duty of teaching; this must be done freely, or with some remuneration, the words of which seem to reject a benevolent interpretation. Moreover, if, by an Indult of the Holy See, or by the indulgence of the Bishop and Chapter, or by a special Capitular Constitution, the contrary is established in a particular diocese, this cannot, for the sake of consistency, be extended to the present case. It may also be said that the resolution of Piacenza, of June 17, 1882, should be considered, in which it is stated in the statutes of that Cathedral that "canon doctors and lecturers shall be treated in the choir as present, under the same conditions." To this, some things are added, as related in the previous case, by which the Bishop showed his unwillingness to grant an exemption. "The Prelate said, 'He should not argue that he lacks the time to devote himself to this work, since he does not teach the same discipline every year. Moreover, he was assigned three years ago to give a course in ecclesiastical history, which he had already taught before, and other canons who teach at the Seminary have time to devote themselves to reading, even if they do not always teach the same discipline. And the time spent in the choir is not long; and it should be added that he is required to recite the canonical hours at home, if he is not in the choir.' But, whatever the case may be, he should make some further effort, if otherwise it cannot be done." Finally, the canon Ramos should have examined all matters, both concerning his presence in the choir, and also concerning the remuneration of substitutes, before attending the meeting and accepting the proposed obligations. At least, with regard to the latter, he could have been excused on the grounds of the agreement from cap. Antigonus, title 35, "Be pactis": "Let the agreements obtain their full force," and cap. Qualiter ibidem: "Care must be taken to ensure that what is promised is fulfilled." However, the Bishop could defend himself by stating that he was not bound by the laws of the jurisdiction in promulgating the edict, "Acta, Vol. XXIV", p. COLXXX. 16.

[*Latin ed. p. 242*]

242. CONCERNING OXOMEN. Furthermore, because the same had been decreed in similar cases, and also because, having been left to his discretion, by a royal decree ratified by the Nuncio, the imposition of the office of teaching as a canon doctor already seemed to have effectively arranged matters so that all things could be better disposed for the execution of the tasks entrusted to him. These, and other considerations,

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led to the following questions being raised: I. Whether, and for how long, a canon doctor, while performing the office of teaching in the Seminary, must be present in the choir. II. Whether, if, due to infirmity, he is unable to give the lesson himself, he is obliged to provide someone at his own expense to take his place in the office of teaching.

RESOLUTION. The Sacred Council, after discussion on July 25, 1891, decided to respond as follows: To I. Negative, with the reservation of the orator's right to appeal for grace. To II. Negative.

FROM WHICH THESE CONCLUSIONS ARE DRAWN: I. That no canon doctor is exempt from the choir, while performing the office of teaching in the Seminary, whether gratuitously or with remuneration. II. That he is not obliged to provide someone else, at his own expense, to take his place in the office of teaching, to the extent that he is unable, due to infirmity, to give the lesson himself.

MEDIOLLANUM, JURIUM, June 27, 1891. Session 24, Chapter 1, Concerning Ref. The Reverend James Biotti, approximately thirty years ago, began to gather young women, especially those who devote their time to work in the workshops of the city of Busto Arsizio, on holidays, in order to protect their faith and morals from the dangers that surround them. A pious work, which...

[*Latin ed. p. 243*]

MILAN. Ab humilibus initiis, hoc institutum crevit in bonam fructum et, in breve, factum est notabile. Ab initio, institutum illud, cuius officium est doctrina Theologiae, "Oratorium" appellatum est, ut ab aliis congregationibus distinguatur. Anno 1863, cum quidam vir pius, Candiani nomine, aedificium proprium, instrumenta scholastica et alia necessaria liberaliter ad usum huius pii instituti contulerat, res ibi melius compositae sunt, et sacellum erectum est, in quo etiam Sacramentum SS. Eucaristiae diebus festis conservari licuit. Sed anno 1871, ob aliquam dissensionem animorum inter puellas, quae ex cupiditate primatus oriebatur, sacerdos Biotti, simul cum multis aliis, ab sede instituti exulavit, dum praepositus parochus puellarum, quae in aedibus Candiani remanserant, curam suscepit. Tunc, sacerdos Biotti institutum suum in quibusdam aedibus prope Ecclesiam S. Crucis collocavit; et, paulo post, cum illa aedificia misere diruta essent, in locum nuncupatum "la Stinaga" iterum migrare coactus est. Ibi, usque ad annum 1883, continuo mansit, cum, cum summa pecunia, superficiem satis amplam apud templum B. M. V. in Prato emerat et aedificium duplex ab fundamentis aedificare curavit, ubi etiam nunc pium opus aptissimo loco consistit. Superficies, ubi aedes instituti constructae sunt, in publicis tabellis non solum sacerdoti Biotti mancipata apparent, sed etiam duobus aliis presbyteris, Pio Chieppi et Leopoldo Crespi Porro, quod utrum illi sint reapse condomini, vel solum fiduciarie scripti, disputatur. Paulo post, cum theologus Biotti et sacerdotes Chieppi et Crespi Porro, sensim seg-

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regarentur ob dissensionem opinionum, die 26 Februarii 1885, theologus declaravit se onus scholarum festivarum suscipere, et maxime cordi esse ut quilibet sacerdos, praesertim vero qui aedificii condomini scripti sunt, auxilium praestarent. Praeterea, idem sacerdos Biotti, XIV Kalendas Octobris 1886, omnia sua iura in pium opus et omnem supellectilem scholasticam praeposito parocho Iosepho Tettamafiti cederat.

[*Latin ed. p. 244*]

244 MILAN. He urged him to appoint two other co-administrators to assist him in the fulfillment of his duties. From that day forward, a dispute arose between him and the priests Chieppi and Crespi Porro, which grew increasingly heated and was observed with great interest by the people; however, the parish priest, having been outvoted, summoned his opponents before the Archiepiscopal Court of Milan. Indeed, the judges of the Archiepiscopal Court, having heard the arguments of both sides, examined the witnesses, and having completed all proceedings, on December 21, 1889, delivered a judgment which, among other things, decreed: 1. That the Biotti Institute was not an oratory, but a school for girls. 2. That both Father Joseph Tettamanti, as well as Fathers Pio Chieppi and Leopoldo Crespi Porro, possessed equal rights and duties, both with regard to the administration of the Institute's property, and with regard to its management and leadership. This judgment did not satisfy the administrator Testaménti, who, therefore, appealed to the Sacred Congregation within the time limit established by law.

A SYNOPTIC DISCUSSION OF THE RIGHTS OF A PARISH PRIEST. Firstly, it should be noted that, even if it were admitted, contrary to all truth, that the theologian Biotti had established nothing other than a school, the parish priest nevertheless, by common law, should have all rights over it. For the pious Mother Church has always been concerned that the faithful should be imbued with the precepts of religion from their earliest years, and therefore she has ordered that sacred instruction in the catechism should be provided in all schools. Thus, the text states in chapter 3 of *De Vita et Honestate*, "Every priest who governs a people should have a cleric who sings the epistle and the lesson with him, and who can hold schools, and who should exhort his parishioners to send their children to the church to learn about the faith, whom he himself teaches with all chastity." Thus, Van-Espen states in *Jus Eccl. Univ.*, part 2, section 1, title 11, chapter 5; and more concisely, the Provincial Synod of Mechlin, chapter 5, apud eumdem auctorem, states: "Those who attend Sunday schools should not only be taught to read and write, but also, and indeed especially, should be instructed..."

[*Latin ed. p. 245*]

MILAN. 245, still in the rudiments of the faith... "Indeed, the care and

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laws of the Church would be rendered void if it were permitted, in private schools and institutions, to disregard religious instruction without impunity, as the learned and pious Benedict XIV teaches in *Instaurationes*, 9. He holds that all schoolmasters, just as much as parish priests, are bound to teach Christian doctrine to children and young students. This is further confirmed by several Synods of Lombardy, which, in addition to decreeing that on Sundays and holy days, children may receive instruction only in religious matters, also charge the parish priests to observe the lives and conduct of all teachers residing within their parishes, and to consider the duties related to the education of children; and if they find anything objectionable in them, to report it to us." Given this, what is decided by the Curia flows spontaneously. For, by law, the parish priest, above all others, possesses authority; it would be absurd to consider him equal to others. Furthermore, the advocate adds that the decision is also flawed because the judge omitted the reasons and considerations that should have been presented in it. Indeed, it is absolutely necessary, as De Angelis states in *Praelectiones de Jure Canonico*, volume last, part 2, page 239, "that in the present practice, for both ordinary courts and especially for ordinary judges, such reasons and considerations must be included in the judgment, so that those who are aware of the judgment may deliberate with these reasons and considerations as to whether it is advisable to invoke a remedy through appeal." Moreover, apart from common law, there are other arguments to demonstrate the jurisdiction of the parish priest in the Biotti chapel. For, the Biotti foundation transferred all of its rights to the parish priest by cession. Furthermore, the advocate states, no one can claim that the theologian Biotti possessed these rights. First, it is clear that Biotti himself established the chapel in order to provide instruction for young working women, as is evident from the actions of the woman Candiani, who left a legacy to the Sacred Biotti in favor of the aforementioned chapel. Thus, many donors and workers, as well as more than seven hundred others, have contributed to the pious...

[*Latin ed. p. 246*]

246. In Milan, the assistants speak of the aforementioned institution of the theologian Biotti; namely, the oratory and festive school founded by him. From the very beginning, the pious priest never abandoned this endeavor, but rather, in order to obtain more abundant fruits of piety and religion, he devoted all his talents and resources to perfecting it; so much so that in the year 1868, he obtained permission from the archiepiscopal curia of Milan to have the oratory solemnly blessed, and to reserve the Sacrament of the Most Holy Eucharist there for a decade. Furthermore, in 1882, he took steps to provide the oratory with a stable location, and, with money partly his own and partly collected from pious donations, he purchased land and built a building, the total cost of which is estimated to be approximately

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40,000 livres. From the very foundation of the institution, the patron has the power of governance: it would be absurd for anyone to prevail over the founder in the administration of the work. Indeed, the assistants testify that the theologian Biotti assumed the administration of the oratory from its very beginning, and the teachers Gallazzi, Vannetti, and Pozzi openly confirm this. With these facts established, the oratory knows by what right it is governed, and that those who hold opposing views, and the parish priest, are mistaken. It is irrelevant that the priest Chieppi claims to have contributed 2500 livres. Even if this is admitted against the truth, it is of no consequence, since, in order to acquire legitimate rights of governance through participation, any donation, however large, is not sufficient, but the donation must at least be equal to the previous one, as Gagliardi teaches in *De iure patronato*, vol. 1, pages 86 and 77. For, as the Holy Rota states in decision 29, number 30, part 7, recent, "an increase in a donation is not a donation; he who increases a donation is called a benefactor, not a donor." Nor do the claims made by those who argue against them provide any greater support regarding the rights of governance, since, from the testimony of the theologian, as well as from the testimony of the Patriarch of Alexandria, it is clear that the priests Chieppi and Crespi were merely assistants. After these observations regarding the expenditure of the pious work, the patron, noting its nature and quality, observes that it is truly primarily dedicated to the religious education of girls, and therefore...

[*Latin ed. p. 247*]

MEDIO-LAN. 247. The speaker asserts that the Biotti establishment is a true oratory, citing facts and evidence. Furthermore, beyond the fact that this pious institution, by longstanding custom, for a period of thirty years, has always held the name of "oratory," and that the very opponent who contests this quality has, on numerous occasions in his writings, referred to it by that name; from its very foundation, the theologian Biotti had nothing other than for young girls to gather in the nearby church to perform sacred duties; then, having established a chapel in his home, he began to expose the most holy Sacrament of the Eucharist on feast days; and when, in the year 1882, he had a new building constructed, he instructed the architect to also design a sufficiently large chapel; which was done, and the design is recorded in the documents. Finally, when the theologian entrusted the building and administration of the oratory to a religious community, he stipulated a condition for the preservation of the oratory's character. Moreover, the very benches and seats used by the girls in the school bear the letter "O," so that it appears not so much an oratory for a school, but rather a school belonging to an oratory. To these things are added the most distinguished witnesses, the priests Ballerini and the Archbishop of Mediolan, who, a few years ago, recognized in the works of the theologian Biotti nothing other than an oratory, as the written documents demonstrate. On

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the other hand, the witnesses brought forward against [Biotti] either prove nothing, or rather confirm the character of the oratory; since all, even those who oppose it, openly acknowledge the character and designation of the oratory from its very inception. If, in these last years, everything has been changed and the customs of the oratory completely erased, it was done by the opponents, deliberately and in fraud of the parish priest, as the priest Chieppi himself openly confesses in his writings. From all of this, it can be gathered that, in all the acts and customs of the theologian Biotti concerning the institution he founded, a constant pursuit of religious aims is evident. But such is the law and the spirit of the foundation, as the founder brought it to fruition. Pitonius, *De controversiis patrum*, all. 42, n. 16. *Rota decis.* 144, n. 14, part. 79, *Rec.* and in Hispalen, visitation, April 30.

[*Latin ed. p. 248*]

248 'MEDIOLANEN. 1700 § Furthermore, concerning the matter. Disturbances. For as the same Piton teaches, op. cit., p. 33, n. 16, and the Rota in Mediolanensis, Capellaniae, January 22, 1716, concerning Althan: in inquiring into the quality and nature of the work, the best and most faithful interpretation is that which derives from the very fact of the founder. Moreover, the advocate concludes, even if it is alleged that the theologian instituted nothing other than a simple school from the beginning, it is certain in law that the founder can, over time, add some condition and quality to his institution and thus perfect his work. Piton, op. cit., p. 95, n. 23; Cardinal De Luca, De iur. patr., discourse 15 and 16, n. 5; De fideicom., discourse 170, n. 10; Vivian, De iure patr., book 1, chapter 8, n. 10; Rota in Ilcinen, Beneficii, June 2, 1706, concerning Kannitz. Indeed, it cannot be denied that the theologian Biotti, especially in recent times until his death, constantly strove to preserve the quality and institutions of the oratory; and in this, precisely, lies the root of the disagreements. For, as it is shown by a declaration, which was issued by the theologian after the judgment of the Court of Milan, to several who inquired, he indeed asserts, in plain terms, that he intended to establish a true oratory with a school. SACRED LAW. CHIEPPI AND CRESPI, AND OTHERS. However, on the contrary, many things have been adduced in confirmation of the judgment. And first, with regard to form, it has been inappropriately invoked that there is a nullity because the reasons for the definition were omitted in it. Indeed, in chapter "Sicut nobis," title XXVII, concerning sentences and judicial matters, the text clearly states: "But since in many places, where there is an abundance of wise men, it is customary that not all things that move the judge are expressed in the sentences pronounced, we shall answer you thus: you must presume that all proceeded lawfully." And Reiffenstuel, Title XVII, Book 2, n. 99, states: "Although the judge may add the reason that moved him to judge in this way, he is not, however, regularly bound to do so." And

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a little earlier: "A sentence, speaking regularly, does not necessarily have to contain the reason that moved the judge to acquit and condemn."

[*Latin ed. p. 249*]

MILAN. 249, as... Indeed, as John Andrew notes, citing [another work], chapter... As also the Abbot [ibid.], in this title, no. 11, and Engel, code no. 26, not only is the judge not obligated to express the reason [for his judgment], but it is even harmful for him to do so; because a bad reason could easily be expressed, and a good one suppressed; and thus, the judgment would be invalid. However, in the case where a judgment has been rendered after documents have been presented and witnesses examined, there is certainly no need to define the reason, since it can be inferred from the very words of the judgment itself. Furthermore, these arguments do not appear in those cases, according to De Angelis, *Praelectiones Iuris Canonici*, volume 1, page 2, in which the judge is obligated to explain the reasons by which he was moved to judge in one way and not another. However, the priests Chieppi and Crespi Porro assert that not only the form but also the substance of the Milanese judgment is consistent with the law; and therefore, they present further arguments to demonstrate the nature of the festive school. They particularly defend this by stating that, from the beginning to the present time, there have always been female teachers in the Biotti institution, and even the opponents themselves admit this. Indeed, the priest Biotti wrote openly to the Patriarch of Alessandria before transferring his rights to the administrator. And if these more recent words and writings of the theologians do not agree with this, namely, if they were said or written at a suspicious time, that is, when he was already an old man surrounded by the administrator, then they should be rejected. Furthermore, the parish priest Tettamanti, before presuming to exercise his parochial rights in the Biotti institution, seems to have denied it the nature that he now wishes to attribute to it. Indeed, in a Milanese newspaper, in order not to implicate himself, in the year 1873, after the demolition of the house at S. Croce, Biotti wrote that the Oratory institution did not have a special nature, but was "a simple school of the family, etc." To these, one could add what the priest Edward Gallazzi presented before the ecclesiastical court, to whom the administrator had repeatedly ordered not to assign the Biotti institution precedence over others in the processions of the Most Holy Body of Christ, because "it was not an Oratory." Moreover, several other witnesses are said to have testified that the school...

[*Latin ed. p. 250*]

250. In Milan, they affirm the institution and proclaim with one voice that the theologian established not an oratory, but merely a school. Furthermore, there is a witness, entirely unsuspected by the ecclesiastical tribunal, who was, by office, an advocate: Adeles Giannetti, president of the

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Sisters of St. Vincent de Paul of the Vercelli province, whom the very priest Biotti had previously wished to entrust with the administration of the pious institution. Moreover, questioned by the judges about the nature of this institution, the president replied that the aforementioned priests had entrusted the Sisters not with the administration of an oratory, but with the management of a school; and that they were forbidden by their own constitutions from undertaking the administration of an oratory. Furthermore, the same Adeles Giannetti presented to the court several letters written by the priest Biotti to the president of the Sisters of the Milan Curia, from which it is clear that he intended to establish not an oratory, but a school independent of secular jurisdiction. What is alleged by the opposing side, in which there is mention of an oratory, was written by the theologian Biotti to the Sisters after the transfer of the administration to the president. In addition to these things, it should be noted that, in order to give the Biotti institution a religious character, or, as they say, the nature of an oratory, it was necessarily required that there be a chapel in the pious house for the performance of sacred functions. Indeed, except for the time when the theologian compelled the girls in the Candiani buildings, from the year 1871, when it moved to S. Croce, until now, it has neither had the use of a church, nor any private chapel. Nor is it credible that he intended to establish it with that purpose in mind; for, even if he had sometimes intended to do so, it would seem almost unbelievable that he would neglect this, and diligently devote himself only to the establishment of schools. They also present school regulations, commonly called "oravi," key tags, book covers, theatrical performance schedules, and other items, on which even the priest Biotti himself wrote "scuola festiva" or, at a time when suspicion was not aroused, ordered that those words be written. Nor are there lacking declarations from some who assert in writing that they intended to pay a salary to the school, and not to an oratory. These, however, are countered with the claim that the girls...

[*Latin ed. p. 251*]

MEDIOLLAN. 251. Sellae et lignea scamna inusta praeferunt litteram O. Etenim stigma illud, fatente praeposito, 25 abhinc annis adhiberi coepit, cum scilicet sacerdos Biotti in domo Candiani consisteret, quo tempore ante puellarum divisionem ibi forsan oratorium extitisse nemo inficiatur. Ad hoc etiam referri debet insolita appellatio « oratorio del teologo » qua pluries ipse sacerdos Chieppi vulgo usus fuit. Quae tamen nihil prorsus efficere memorant, cum rei alicuius natura, praesertim cum plura obstent documenta, nequaquam ex nomine desumi debeat. Neque validius argumentum deduci existimant ex verbis Mediolanensis Archipraesulis et Patriarchae Alexandrini. Siquidem primus in sua epistola ad sacerdotem Biotti probans sororum charitatis adventum, vocat institutum « scuola ed oratorio festivo » seque ostendit de religiosa puellarum institutione sol-

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licitum, quae de vero oratorio dici nullatenus potuissent. Alter vero Antistes dum in loco Busto Arsizio brevi moram faceret, cum hospes in praepositi domo diversaretur quod ab eo acceperat de instituti natura probabiliter epistolae consignavit. In vado posita scholae natura, ad secundam partem mediolanensis sententiae sustinendam progredientes, evincere satagunt sibi eadem prorsus iura ac praeposito Tettamanzi in themate esse adiudicanda. Hic igitur tuentur ad se condominium aedium spectare nec non scholarum moderationem ex pluribus monumentis demonstrari. Et primo adest publici tabulam instrumentum diei 24 Aprilis 1882, quo emptio facta fuit. Adsunt testes qui haec confirmant, neque desunt documenta ex quibus eruatur emptionem a Chieppio praecipue ad exitum fuisse perductam. Quod si ex adverso theologus aliique, fiduciario tantum nomine inscriptos proclamant, haec est assertio quae scripta monumenta labefactare non potest. I. 1. Cod. de testibus. « Contra scriptum testimonium non scriptum non profertur » et I. 31. Cod. De donationibus » « Superfluum est privatum testimonium, cum publica monumenta sufficiant. »

[*Latin ed. p. 252*]

252 MILAN. Furthermore, they present numerous signed documents, in which it is indicated that certain sums of money, either from their own resources or from the offerings of the pious, were spent on a pious work. They add that, up to the year 1886, they were considered to be true co-owners and participants in the administration, and to prove this, they mention certain actions and statements of witnesses, from which it can be gathered that three priests together governed Vercelli and were in communication with the Sisters of St. Vincent de Paul, as if they possessed the very same rights. Moreover, even granting that Fathers Chieppi and Crespi Porro contributed nothing to the pious institution, it would not follow that the theologian Biotti's successor inherited superior rights. For we are speaking of a donation made *inter vivos* [among living people], which certainly could not be revoked solely by the donor's repentance. Indeed, from I. 24 ff. of the *De reg iuris ant.* [Concerning the principles of law], it is written: "No one can transfer more rights to another than he himself possessed," and from Rule 79 in VI: "No one can transfer more rights to another than are recognized as belonging to him." Therefore, since in 1886 the theologian Biotti possessed only one-third of the property, it is evident that the same portion passed to the prefect. Then, almost countless objections against the witnesses summoned by the prefect are brought forward. Regarding several of them, it is indicated that, in giving their testimony, they were motivated by reasons other than truth, and their statements are rejected, invoking the legal maxim: "The faith of witnesses must be considered," [i.e., their credibility must be assessed]. Finally, it has been observed that, whether the oratory or the school is a pious institution in question, nevertheless, the parish is in no way subject to the authority of the prefect and Tulle. Indeed,

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it has been established that the parish priest has no real jurisdiction in the external forum, but only a paternal administration. Therefore, if authors were to discuss their rights more extensively, in a careful enumeration, neither feather nor word is found regarding the authority that the prefect claims for himself in this matter. Schmalzgrueber, Part III, title 29, § 2.

[*Latin ed. p. 253*]

MILAN. 253 Concerning Lucca, Concerning Parishes, book 2, chapter 24, number 8; Bouix, On the Duties of a Parish Priest; Monacelli, Practical Church Law, volume 1, page 18, number 4; Barbosa, On the Office and Power of a Parish Priest, etc. Indeed, from the Decree of the Holy Roman Church, pertaining to the City and the World, of the year 1703, it is established that pious congregations existing in oratories separate from parish churches have no dependence on the parish priest, neither concerning sacred functions that are not parochial, but only are subject to the authority of the Bishop, from whom, through legal channels, these pious works of the diocese immediately depend. Nor can it be proven with a stronger argument that festive schools are subject to the parish priest. For chapter 3, Concerning the Life and Honor of Clergy, must be understood according to the Gloss on "schola cantus," and the other authorities only present the dispositions of particular laws. The Milan Synod, mentioned above, prescribes that such schools should depend on the Bishops. To the parish priests, however, is reserved only the vigilance concerning the life and the private conduct of the teachers and the young people. Furthermore, the Constitution for the Pontifical Jurisdiction, promulgated by Pope Leo XII, under the title "Quod divina sapientia," contains the following: "The Bishop presides over these public schools, either personally, or through a clergyman chosen by him. The Bishop, or the person delegated by him, will watch over all matters pertaining to doctrine and morals, and will also see to it that the teachers instruct their students in the fundamentals of the faith and the dogmas of the religion." Having discussed these matters, the purpose was to clarify the following question: Whether the opinion of the ecclesiastical court of Milan, of December 21, 1889, should be confirmed or rejected in this case.

RESOLUTION. After deliberation, the Sacred Congregation decided on June 27, 1891, to respond: "The opinion is to be rejected, and the following is the reasoning."

FROM WHICH THE FOLLOWING IS GATHERED: 1. Parish priests, or clerics in their place, are to be taught, besides reading and writing, the fundamentals of the faith.

[*Latin ed. p. 254*]

234. MEDIOLANUM. To instruct those who attend Sunday services; or to oversee the lives and conduct of any teachers residing within their

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parishes, and to diligently fulfill the duties pertaining to the education of children. II. In the case of ordinary tribunals, and especially for ordinary judges, reasons and motives must be expressed in the judgment itself, so that the parties may deliberate whether it is advisable to invoke the remedy of appeal. III. It is not sufficient for a legitimate founder to acquire any endowment through participation; rather, an endowment at least equal to the previous one is required, because an increase in the endowment is not an endowment, and he who increases the endowment is considered a benefactor, not a donor. IV. The law of the foundation is to be presumed to be such as the founder brought about in practice. V. Therefore, in examining the quality and nature of the work, the most optimal and reliable interpretation is that which is derived from the very act of the founder. VI. The founder can also, over time, add certain conditions and qualities to his institution, thereby perfecting his work.

ROMAN INTERPRETATION DECREE. July 25, 1891. Through a summary of petitions.

SUMMARY OF THE MATTER. Recently, letters of this tenor were presented to the Holy Congregation: The Holy Penitentiary, concerning the faculties granted to Ordinary authorities in the places to enter into agreements with those who, having purchased Church property, revenues, rights, etc., seek reconciliation with the Church, prescribes to the same Ordinary authorities that they do so with the consent of those who represent the respective pious causes and others who have an interest.

[*Latin ed. p. 255*]

"In ROMANA, it is permissible to admit to a settlement, which, considering the real value of the same funds, or rights, the price of purchase, the actual condition of the parties, and the fact that the aforementioned parties, especially through the burden of pious works, if any exist, and after considering all other circumstances, appear to be equitable." The Ordinary and Reverend Ordinaries of the ROMANA Region, when they convene for their customary annual consultations, having reviewed these matters, decided to request a solution from the Sacred Congregation [of Bishops] regarding the following question: Whether the Ordinary, endowed with these powers, can accept a settlement from those who have purchased goods belonging to the episcopal residence, without consulting the Chapter of the Cathedral, or whether he must obtain their consent, or at least seek their advice.

Synopsis of the Discussion: It has been noted, beyond the cases expressly regulated by law, that Bishops must act with regard to the consent of the Chapter "in all matters in which a notable prejudice can be caused to the Church and its successors." Schmalzgrueber, p. 1, title 10, n. 8. Indeed, in such settlements, it is possible for both the Church and its successors to suffer harm, and no one doubts this. However, Reiffenstuel, h. Ut, § i, n.

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12, differs somewhat in this regard, writing: "<generally, the consent of the Chapter is required in all those cases or matters in which the interest or prejudice of the Church or of the Chapter itself is involved,>" words which could admit of an interpretation favorable to the freedom of the Bishops. Furthermore, it is established in law that the consent of the Chapter must be included among the formalities that are necessary for alienation. Moreover, if the Church, through the administration, ratifies sales that have been unjustly carried out, and accepts some sum, it may then appear that a true alienation is taking place, which cannot be carried out without the hearing of the Chapter.

[*Latin ed. p. 256*]

206. In ROMA, besides the fact that it is usually a matter of small sums of money, and much could be said about the nature of such alienation, it must be noted that an apostolic decree already existed, concerning whose effects Cardinal De Luca, in *De Aliénât, dic. 1 n. 4*, wrote so excellently: "Since, among the solemnities prescribed by common law, the most important is that of the consent of the chapter, some believed that this solemnity was not fulfilled by the aforementioned apostolic decree, but was necessary. However, it is truer to say the contrary, although the aforementioned decree contains the clause 'those who are called, to be called, or those who are present, to be present,' unless the interested chapter is present, and therefore its consent must be obtained for the interest, and not for the solemnity. Only from what is adduced in Barbosa, *alleg. 95 n. 70*, does it appear that the consent of the chapter is required in this solemnity, where the alienation of the goods of the episcopal mensal is concerned, by authority of the Rota, in *Seraph., decis. 443 n. 4*. However, this seems less true, as even received usage teaches, and the aforementioned decision rather indicates the contrary, whenever the goods of the bishop or prelate are concerned, and the cause is verified for the sake of utility. Having stated these things, it seems that nothing else needs to be added, since the entire question appears to be restricted to the interpretation of the words 'and those who have an interest.' Whether, in the matter of canon law, at least in a broad sense, those who have an interest can be said to be present, and if their consent is not required, whether at least their advice should be sought, as in matters of greater importance, was referred to the judgment of the Most Reverend Fathers. With the foregoing noted, the question was asked: what should be answered to the Ordinary's doubt? RESOLUTION. The Sacred Congregation, having considered the matter on July 23, 1891, decided to respond: The Ordinary is bound to obtain the consent of the Chapter.

[*Latin ed. p. 257*]

257 Apostolic Letters whereby the Episcopal Hierarchy is established in

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Japan. Nothing could afford Us greater or more pleasing solace, in this turbulent and sorrowful course of human affairs, than to see the light of the Catholic religion widely spread among peoples who are divided and ignorant of the truth, and to see them, with the doctrine and freedom of Christ, happily attain true prosperity and salvation. It is a most welcome task for Us to devote all our care and study, and to contribute with all our strength, so that all nations may have safeguards for Catholic piety, ministries for the discipline of Christian life, and that these may properly established, display their force and virtue, and thus We rejoice that We may serve the glory of God, and be helpers of divine goodness towards men in accordance with Our office. With this sentiment, We observe with great joy that Christian institutions and sacred things are flourishing in the Japanese Empire at this time, with the help of divine grace, and that in this extreme and illustrious region of the rising sun, a wide field is open for the heralds of the evangelical truth to preserve and spread the Catholic faith, which courageous men brought to those shores in the 16th century, irrigating them with their sweat and blood, despite all opposition. For at that time, the wounds of schisms and heresies had infected many cities of Europe, but zealous ministers of the Catholic truth did not hesitate to venture into unknown and unexplored lands, which only recently, brave and skilled sailors had opened with sails raised high, seeking no reward other than to convert, in the name of Christ, minds that were ignorant and hearts that were astray, to Him in whom is our life, our salvation, and our resurrection. Thus, access to the Japanese region was opened in the year one thousand five hundred and forty-second, when the Portuguese, whose great spirit and outstanding virtue in maritime expeditions shine with glory for posterity, arrived at those shores after enduring many perils; and then, in the ninth year of the same century, it happened that the Japanese people attained happiness, when St. Francis Xavier, heir to the virtues of the ancient Apostles, entered the Japanese islands, powerful in word and deed, to show the nations the right path to salvation. This great pioneer of the East, endowed with the spirit of God, spared no labors, and brought an innumerable multitude of people to Christ; and his illustrious companions, following in his footsteps, in the great Empire, Volume XXIV, page 281.

[*Latin ed. p. 258*]

258 Letters followed, bringing with them such good news that, in a short time, more than a hundred thousand souls were cleansed by the holy sacrament of baptism, having passed from the worship of false gods to the joyful pastures of the Lord. Furthermore, outstanding men from the Franciscan, Dominican, and Augustinian families, members of the Order of Hermits, distinguished themselves, spread throughout the land of Japan, and, everywhere, through the fruit of their ministry, they increased the kingdom

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of Christ. Moved by these most auspicious advances in the Christian cause, Pope Pius V, our predecessor, in the year 1566, spoke with the Patriarch of Ethiopia, urging him to migrate to Japan to assist in the work of the Catholic ministry, and then, with apostolic authority, he established an Episcopal See, which was what the King of Portugal most desired. He also wished that the Japanese islands, which on this occasion were separated from the diocese of Macao, under whose jurisdiction they had been, should be assigned to this new see, along with all its rights and possessions. A new seat for the administrator of the sacraments was established in the city of Funai, and it was granted all the powers and rights that seemed necessary for the good administration of Christian affairs. The fruits that flowed from the prudent care of Pope Pius V were by no means meager or insignificant, so that his successors might see: for they saw that the light of true faith in Japan had first been received by the lowest of people, and then, with God's increase, by the nobility, and finally, by princes, by rulers, and even by kings themselves. A splendid example of this was provided in the year 1585, when three most noble princes, namely, the King of Bungi, the King of Arima, and the Prince of Omura, did not hesitate to send a most distinguished embassy to Pope Gregory XIII (who had succeeded Pope Pius V in the Roman See), to declare their obedience, faith, and piety towards the Apostolic See. This embassy, coming from the furthest reaches of the East, had never been seen before in those centuries, and, by its very nature, it aroused great admiration among all the orders in this city, as well as celebration and congratulations. The Most Holy Pope received these illustrious men, who were of high birth, with the utmost honor, in a large gathering of Cardinals, princes, and prelates, with the utmost attention from all the orders, and he treated them with all due respect. Pope Sixtus V, who succeeded Gregory XIII, also held them in high esteem, and he wished to enroll them in the patrician nobility of the city, because of their clarity of faith and lineage. But this great prosperity of the Christian religion in Japan was, in subsequent times, greatly hindered by a very serious storm, and by the subsequent rulers, Taicosama and others, who persecuted the Catholic religion.

[*Latin ed. p. 259*]

LETTERS 259, and those who are far removed from that humanity, from which, in this age, the glory of the Japanese Empire derives. For in that bitter time, not only were foreign priests and religious men persecuted, but even Japanese citizens, for the sake of eradicating the Catholic faith, were so cruelly treated that the faithful were offered to the slaughter in droves; but tortures, killings, and terrors served not to weaken their constancy, but to illustrate the palm of martyrdom and the virtue of those who suffered. Finally, those faithful who survived, both citizens and foreigners, were expelled from Japan, and a public edict was proclaimed, forbidding any-

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one to practice the Catholic religion, so that the Christian name in that region seemed to be completely destroyed and extinguished. However, when many years of adversity had passed, and the flame had subsided, it was no different from what Our Predecessors had done, namely, to devote themselves to restoring the religious affairs that had collapsed in Japan, and to encourage evangelizing workers to undertake the apostolic mission, and to replenish the ranks of Christ's soldiers who had been slain. In this matter, the greatness of Urban VIII was evident; for he not only revived what had been established by his predecessors, Gregory XIII, Clement VIII, and Paul V, but he also wished to extend the scope of his endeavors. Following his example, the Sacred Congregation for the Propagation of the Faith, from the early years of its ministry, considered it appropriate to offer its assistance in repairing the damage to religion in Japan, and it issued decrees with Apostolic authority, which pertained to establishing and maintaining perfect harmony and concord among the men of the sacred expeditions, to preserving the Japanese Seminary located in the city of Manila, and to appointing a new Bishop of Japan to lead the faithful. Moreover, in subsequent times, the Vicars Apostolic and sacred administrators of the regions bordering Japan were encouraged to undertake the ministry among the Japanese; but, since they were prevented from doing so by obstacles and difficulties that left none of them any opportunity or power to work, it was necessary to cease these efforts. Meanwhile, although every avenue seemed to be closed to the Christian religion, the blood shed by the ancient Christians had caused a multitude of Christians to flourish in Japan, for the Catholic faith, once publicly established, then agitated and expelled, had long remained hidden and concealed in many families who zealously cherished it. Indeed, it has been revealed, not once, nor in a minor way, but in this very beginning of the century, to the glory of divine providence, that a considerable number of faithful were present in the villages and towns of Japan, who had preserved the faith transmitted to them.

[*Latin ed. p. 260*]

260 Letters from ancient heralds of the Gospel attest that they faithfully retained the doctrine of the faith and practiced true worship of God according to the Catholic discipline. However, in these recent times, the divine mercy has willed that a fortunate and blessed event should occur: that Catholics arriving from Europe should unexpectedly encounter a progeny of the ancient faithful in Japan, and that the Catholic religion should reopen the path to its former seats. Indeed, the expeditions that the Gallic Empire, within the memory of our time, sent to Japan, provided a welcome opportunity and means for the messengers of the Gospel to reach the region, impressing it with the faith of the ancient brethren, among the retinue of those who had been sent for public negotiations. Indeed, the beginnings of these affairs were full of business and difficult obsta-

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cles, but these were not such that they deterred our predecessor, Gregory XVI, from establishing, by the judgment of the Sacred Congregation for the Propagation of the Faith, an Apostolic Vicariate among the Japanese. This vicariate, together with the Episcopal dignity, was conferred upon the priest Augustine Forcade from the Parisian Seminary, who had been called upon for foreign missions in the year 1846, and he was given the task of administering the Christian affairs, not only in Japan and its neighboring islands, but also in Liou-Kou (which is the name of that island), along with his assistants. Several reasons prevented him from fulfilling the assigned task, but his colleagues, priests from the Parisian Seminary, eagerly seized the opportunity presented to their virtue, and, as in other expeditions, they remained there for many years, demonstrating the most excellent proofs of their piety and constancy in great labors. Above all, by the grace of divine benevolence, the illustrious alumnus of the Parisian Seminary, the priest Girard, shone forth, who, having established a firm base among the Japanese, was the first to labor successfully in bringing them to Christ, for which reason he received the title and authority of a pro-vicar from this Apostolic See. Indeed, he touched upon auspicious beginnings, both for himself and for the Japanese people; for, as once Saint Francis Xavier entered Japan on the day of the blessed Virgin Mary's assumption into heaven, so too did he enter Japan in the forty-fifth year of this century, when the glory of the immaculate conception of the blessed Virgin Mary was consecrated by the supreme teaching of our predecessor, Pius IX, and promulgated to the Catholic world, uniting the hearts of all the Christian people in piety and obedience to one faith. Not long after the time when he established himself in Japan, the rites and sacred practices of the Catholic religion began to be publicly observed in the seats of the Gallic legation; and then, in the city of Yokohama, the first temple dedicated to the true God was consecrated, which was very pleasing to the piety of the Japanese, almost three centuries having passed since the Catholic religion had been ordered to leave Japan. And not long after,

[*Latin ed. p. 261*]

LETTER 261: Another [mission] has been established in the city of Nagasaki, dedicated to the honor of the twenty-six Japanese Martyrs, to whom Our Predecessor, Pope Pius IX, had decreed the honors of the blessed in Heaven. For the people of Japan, by nature, are inclined towards honesty and humanity, and they have not proven themselves to be idle or sluggish in receiving the religion of Christ, and immediately a rich harvest of catechumens, numbering ten thousand, emerged from this fertile field, who offered themselves to be instructed in the Catholic doctrine, so that they might afterwards be cleansed by the salutary laver of baptism. Although at this very time, the ancient enemy of the human race had attempted to kindle new flames of anger against the Catholic name, and

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grave dangers seemed to loom, nevertheless, with the favorable help of divine grace, the enemy's fury subsided, and with peace restored, the seeds of faith, which had long lain hidden in Japan, were revealed to the ministers of the Gospel present there. For, among the descendants of the ancient faithful, more than ten thousand people were found, in whom the heritage of the Catholic faith had remained intact and uncorrupted from their fathers. Indeed, divine Providence had preserved the ancient foundations of the Church, which was being reborn in Japan, upon which it might again be built and rise up, preserving its honor, so that the new faithful might coalesce not as guests and strangers, but as citizens and members of the ancient Martyrs of Japan, united with them. Now, considering these circumstances, in the year sixty-sixth of this century, our Council for the Propagation of the Faith, the new Vicar of Japan, Bernard Petitjean, who had also renounced the titular See of Myriophytos with Apostolic authority, dedicated himself with great concern to the ordering of Christian affairs. Ten years later, the vicariate was divided into two parts and distributed, with Japan being separated into a northern and a southern region, and in both regions, with Apostolic men converging in many places, numerous institutions were established for the transmission of the Catholic faith, which immediately proved beneficial to the Japanese people. Three years ago, understanding that it was necessary to instruct us about new arrangements for the administration of sacred affairs, we established a new vicariate in the very heart of the Empire, calling it the Central Vicariate; and this year, we established another vicariate in that part of Japan which looks more towards the north. And now, in these recent times, since the Christian cause has been flourishing with sufficient prosperity due to the humanity and justice of the Imperial Government of Japan, we did not consider it necessary to omit expressing our grateful sentiments to the Supreme Emperor in our letters, with the understanding that we are confident in the extent of His Majesty's inclination towards the faithful and His constancy. These letters being given, the fullness of human-

[*Latin ed. p. 262*]

262 We have received a response from His Majesty regarding the affairs and the office, conveyed through a most distinguished envoy sent to Us in the City, while we were celebrating the solemnity of the fiftieth anniversary of our priestly ordination. Now, therefore, considering the more pressing reasons for Our paternal concern regarding the religion in the Japanese Empire, and because just causes inspire Our hope for the best, we deem it to be the opportune time to establish and implement a hierarchical administration of sacred affairs in that Empire, according to the prescriptions of the canonical laws. Therefore, after having requested that Our Most Reverend Fathers, the Cardinals of the Sacred Congregation for the Propagation of the Faith, after having offered prayers to the Almighty God, and after hav-

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ing implored the help of the Virgin Mary, of the holy Apostles Peter and Paul, and of Saint Francis Xavier, who carried out the ministry of truth and salvation in Japan, and also of the illustrious Martyrs, whose triumphant blood once permeated the very soil of Japan, by Our own authority and with mature deliberation, for the greater glory of the Divine Majesty and for the growth of the Catholic faith, by these letters We establish and constitute an Episcopal Hierarchy in the Japanese Empire, and We elevate the illustrious City of Tokyo, which is the capital of the Empire and the seat of the Most Serene Emperor, to the dignity of a Metropolitan or Archbishopric, assigning to its jurisdiction the entire territory to the north, extending as far as the southern borders of the Provinces of Itchigo, Iwatshiro, and Iwaki; to the south, the entire region which encompasses the entire Provinces of Jetchidjen, Mino, and Owari, up to Lake Biwa; to the east and west, the entire region extending to both shores, up to the coasts that border the sea. To this Metropolitan Church, We add three Episcopal or suffragan Sees, one of which We establish in the city of Nagasaki, honored by the trophies of the Japanese Martyrs; another in the city of Osaka; and a third in the city of Hakodate. The Nagasaki See will encompass the region of Japan that leans more to the south, namely the islands of Kiou, Chiou, Hirado, Goto, Tsuchima, Lioukou, and other smaller islands that are surrounded by the sea. The Osaka See will encompass the central part of Japan, namely the entire territory that extends from Lake Biwa and from the borders of the Provinces of the Empire of Jetchidjen, Mino, and Owari, to the western shores of the great island of Nippon, together with the island of Chicocou and other adjacent islands.

[*Latin ed. p. 263*]

LETTERS 263, which are contained under the authority of the Magistrates of the Provinces mentioned above. The Diocese of Hakodate will, in turn, encompass the entire region to the north, namely, including the entire territory of Jezo and the Kurile Islands, and to the south, the entire Provinces of Itchigo, Iwatshiro, and Iwaki, as we have mentioned above. In order that we may provide suitable Pastors for the Sees which we have established, we hereby appoint Apostolic Vicars who have heretofore diligently devoted their care to the advancement of the Catholic Religion in Japan, and we invest them with the authority and title of Ordinary Bishops by these Our Letters, namely: the Venerable Brother Peter Osouf, from the titular Church of Arsinoite, to the Metropolitan See of Tokyo; Julius Alphonsus Cousin, from the titular Church of Acmonia, to the Episcopal See of Nagasaki; Felix Midon, from the titular Church of Caesaropolitan, to the Episcopal See of Osaka; and finally, Alexander Berlioz, from the titular Church of Calynda, to the Episcopal See of Hakodate. It will be the duty of the Archbishops and Bishops, with united minds and diligent studies, to strive to properly manage the affairs of the Church and to promote the

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Kingdom of Christ, and also to carefully consider the proper administration of sacred matters. Furthermore, We shall never cease to be ready to assist them with Our authority, counsel, and help in all matters which We understand to pertain to the glory of the divine name and the salvation of souls. Moreover, since the Japanese Empire clearly demonstrates its desire to pursue those things which most pertain to the benefit, prosperity, and honor of the Japanese name, We have no doubt that it will be ensured by public authority that the new Pastors will enjoy full freedom in their ministry, so that through this, not only Christian wisdom, but also the true praise of humanity may be spread among the people. May God, rich in mercy, who alone performs great wonders, grant that the citizens of Japan, through the riches of His goodness, may be fully perfected in the confession of one faith and in the bosom of the Catholic Church. Finally, We decree that these Our Letters shall never, at any time, be noted or impugned for any reason of fraud or deceit, or of any other defect, and that they shall always be valid and firm, and shall have their full effect, and shall be inviolably observed. Notwithstanding any apostolic and synodal, provincial, and universal decrees, general or special, that have been issued, nor the rights or privileges of any ancient Sees that formerly existed in Japan, and of any Missions and Apostolic Vicariates that have been established there, and of any churches and pious places, nor even by oath...

[*Latin ed. p. 264*]

264 Letters confirmed by Apostolic authority, or by any other firm endorsement, and to all other contrary matters whatsoever. For although, for the derogation of these, a special mention would need to be made, or any other form, however elaborate, observed, we expressly derogate from the aforementioned matters. We also declare null and void, and of no effect, anything that anyone, by any authority, should knowingly or unknowingly attempt to alter in this regard. We wish that these letters, even when printed, and signed by the hand of a public Notary, and sealed with the seal of a worthy man in ecclesiastical dignity, according to established procedure, should have the same validity as the expression of Our will, which would be demonstrated by this very document. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 15th day of June, in the year 1837, in the 14th year of Our Pontificate. M. CARD. LEDÓCHOWSKI. APOSTOLIC LETTERS from the Most Holy Lord Leo XIII, Pope, by which a College for Maronite Clergy is established in the city. Wisely and felicitously, the provident mind of Our Predecessor, the illustrious Gregory XIII, consulted for the good of the Maronite Nation, who, perceiving how much praise solid doctrine and cultivated virtue bring, not only to the individual, but also to the public good, established a Maronite College in this venerable city, in which young Clergy of that Nation would be properly educated in the best studies and ecclesiastical discipline. That Pope, so provident,

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considered that the effort expended in establishing that College would be worthwhile, so that, for its sake, a hostel for Maronite pilgrims, previously founded by him in the city, near St. John of Ficoria, in the region of the lake of the Virgin, would be converted into the seat of the aforementioned College, and, by Apostolic Letters issued in the year 1584, the former institution of the hostel would be elevated to the right and condition of a just and legitimate College. The seat of such a College remained secure for more than two centuries, and, with divine grace, a most pleasing harvest of distinguished men arose from its discipline, who, as the memory of their time teaches, not only deserved well of the Church, but also illuminated the Maronite name with their learning and labors. Among these outstanding alumni...

[*Latin ed. p. 265*]

LETTERS 265. It is pleasing to recall the learned men, especially Joseph Simonius, of celebrated reputation, to whom the Eastern letters and Our Vatican Library owe many precious treasures of ancient erudition and doctrine; also Abraham Ecchellensis, a man of learning highly commended by the praises of doctors, from whose ranks the most illustrious men have been raised to the dignity of Patriarch or Bishop, whose excellence in doctrine and virtue shone brightly in bringing back to Catholic unity those who had strayed. Because of the great fruit and glory of this Institute, it could not but cause serious and bitter distress to the Maronite people, considering what happened to this College at the beginning of this century, for, due to the disturbances of the times, when many ecclesiastical goods came to the city, the College itself, along with its students, was struck by this calamity, and its buildings were transferred to the possession and power of others. However, in these times of adversity, Our Predecessors took care to collect and preserve what little remained of the College's assets, like the remnants of a shipwreck, and to allocate some of their revenues to a few Maronite clerics of the Nation, so that those who possessed these goods might benefit from them. Now, since all these things were made known to Us, We have always felt deeply for the Maronites of Lebanon, who, despite having many illustrious names, lacked a former ecclesiastical institution at this Apostolic See, and We have long cherished the thought of bringing it about, with Our authority and effort, that the College, once founded in this city, might be restored from ruin. For We considered it a paternal duty, with which We are affected towards all Eastern Catholics, and that the Maronites deserved it in a certain right, who, as cultivators of their ancestral faith, have always shown steadfastness in maintaining and preserving it, and have even demonstrated greater virtue. Moreover, it has happened not only that the Patriarch and other Maronite prelates have repeatedly requested the restoration of the College of their Nation from Us, but they have also endeavored to gather and contribute funds for this

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purpose, which, although not sufficient for the need, nevertheless gives firm hope that, with the generosity of the Maronites and other faithful, the just patrimony of the College will finally be fully restored. We, however, eager to reward their efforts and to assist in this most noble work, will designate a site in this city for the Maronite College.

[*Latin ed. p. 266*]

266 We grant these letters, suitable for its uses, which We attribute in perpetuity and with full right to the aforementioned College. Now, therefore, gladly concurring with the wishes of the Patriarch and the prelates of the Maronite nation, and bringing to fruition a purpose that has long been ours, by these letters, with Our Apostolic authority, for the greater glory of God, for the growth of the Catholic religion among the Eastern peoples, and for the honor and benefit of the Maronite nation, We establish, restore, and anew encourage the College of the Maronite nation in this venerable city, for the instruction of Maronite clerics, according to the laws which are stated below, and We wish this College to possess the same rights as those which the Pontifical colleges of clerics in the city possess, by the best and most legitimate right. Furthermore, We earnestly desire that this Maronite College may rise to its ancient dignity and renown; We trust that Our generous support will be repaid by the diligent progress of the students in virtue and doctrine. Therefore, this College shall remain perpetually under the jurisdiction and authority of Our Council for the Propagation of the Faith, which is responsible for the affairs of the Eastern rite, and shall be governed by the same laws and regulations that are in force in the Urbanian College for the Propagation of the Faith. The Cardinal who is the General Prefect of the Sacred Council for the Propagation of the Faith, and who shall be in the future, shall perpetually exercise the office of Patron or Protector of the Maronite College in the city. Moreover, in order that the proper administration and prosperity of the College may be ensured, We grant to the Cardinal Patron the authority to appoint a Rector and other administrators who appear to be more suitable and useful for the good of the same College; and, after obtaining the opinion of the Council of Cardinals, of which We spoke above, the Cardinal shall designate the Rector and other administrators of the College, and shall report to the Supreme Pontiff concerning them, so that those who have been designated may be chosen by the authority of the Supreme Pontiff. A priest of the Maronite nation shall be chosen by the Patron to hold a position in the College, and who shall devote himself to the instruction and training of the students in those matters that pertain to the sacred Liturgy and to the proper rites of the Maronites. The authority and power of the Patron shall be such that all who hold the office of governing and administering in the College, as well as the students, must obey and submit to him. When matters of greater

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importance concerning the College are to be considered, the Patron shall—

[*Latin ed. p. 267*]

LETTERS 267 shall be sent to the Supreme Pontiff, and each year, a description of the entire College's status shall be communicated to the same Supreme Pontiff in writing. In order that the Cardinal Patron may more easily and expeditiously fulfill his duties, we add to him the Auxiliary Bishop Urban, administrator of the rites of the Orient, appointed by the acts of Our Council, who, in the name and with the authority of the President of the Maronite College, shall assist the College's Patron in all matters pertaining to his ministry. Finally, all that which we have established and declared in these Letters shall be considered valid and firm, and we wish and command that it be so in the future, decreeing that anything attempted concerning these matters by anyone shall be null and void, notwithstanding any contrary provisions. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the thirtieth day of November, in the year 1891, in the fourteenth year of Our Pontificate. LEO XIII, POPE. ¥ W ¥ FROM THE HOLY CONGREGATION OF THE COUNCIL OF NICE. PIUS, July 25, 1891. Session 23, chapter 18, On Reform. SUMMARY OF FACTS. In order that a more accessible path might be opened for the poor young men of the Diocese of Nice who are called by the Lord to the honor of the priesthood, the pious Sisters Joseph and Mary Ignatia De la Fuente had already, since the year 1869, considered establishing certain pensions, or, as they say there, scholarships. For this purpose, they had initially assigned an annual income of two thousand livres, which was subsequently increased to six thousand, so that a sufficient endowment could be established to perpetually support fifteen clerics.

[*Latin ed. p. 268*]

•268 MCIEN. It is reported that the execution of this plan was entrusted to a certain Father Vigon of the Order of the Minor Friars of St. Francis; who, for this reason, was supposed to have negotiated with the Bishop regarding this pious foundation, with certain conditions stipulated. However, since the Prelate who was present at the Vatican Council was residing in Rome at that time, Father Vigon deemed it more appropriate to inform the Canon of the Bishop in secret about this matter; who, however, perhaps through oversight, neglected to acknowledge the received proposal. In the meantime, the Sisters of La Fuente began negotiations with the Chapter of the Cathedral Church, or with its representative, regarding the completion of this pious institution; and after some time, it appears that an agreement was reached, involving a sum of 120,000 livres. Then, a regulation, commonly called "Regolamento," was written regarding the administration and disbursement of pensions, which was produced without the signatures of the parties involved and without a date affixed by the Chapter, and

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in which, among other things, the following is stated: "The Chapter will consolidate this sum of money under its own name and will divide it into fifteen parts, each consisting of 100 livres; reserving one of these parts for itself under the title of administration and beneficence." However, according to Father Vigon, the Sisters of La Fuente did not consider this regulation to be valid; and indeed, upon learning that it was not in accordance with their intentions, they immediately protested against it. On May 3, 1870, the Chapter decided to inform the Bishop about this donation, who was then residing in Rome due to the Vatican Council, and who, according to two letters from the Prelate cited by the Chapter, appears to have approved of the proceedings. However, not long after, difficulties and questions began to arise, from which the present controversy has arisen. For the Sisters of La Fuente maintained that the Chapter was acting contrary to their intentions, especially because it was using the income from one pension, and because it had not allocated a significant portion of the administration to the Bishop, and they were strongly opposed to this. By 1877, the situation had reached the point where they were required to request permission from the Apostolic Authority to bring the canons before a secular tribunal, but this permission does not appear in the records.

[*Latin ed. p. 269*]

NICE. 269 To avoid the admiration and scandal of the people, and so that the pious institution might not suffer damage, they preferred to desist from the judicial process. After these events, in the year 1879, hope arose that the matter might be settled peacefully. Indeed, a certain agreement was proposed by the Bishop who had recently assumed the governance of the Church of Nice, which, after being considered by many, ultimately could not be brought to a conclusion, due to disagreements among the parties. Neither do the subsequent meetings, nor the treatises proposed by learned men from both sides, seem to have made progress towards restoring harmony. For on March 27, 1883, the canon and theologian, to whom the funds for the scholarships had already been entrusted, as procurator for the Chapter of Nice, presented a petition to the Sacred Congregation concerning several matters to be addressed, and lamented that the Bishop had once again raised the question of the pensions, which the Chapter had been granting peacefully since the year 1870, according to a secret foundation act with the approval of the Ordinary. The procurator of the Chapter also stated that, when asked by the same Bishop about a friendly settlement, he had responded negatively, and that the Bishop had added that he wished to discuss this matter with the Apostolic See. In accordance with these events, the Prelate presented the matter to the Supreme Prince, and on April 7, he sent to the Sacred Congregation of Bishops and Regulars the prayers of the Sisters of La Fuente, in which they complained about several matters concerning the administration of the Chapter. After

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the Bishop had provided further information, the following response was given after prayers: "This Sacred Congregation of Bishops and Regulars, after reviewing all the documents pertaining to the pious institution made by the Sisters La Fuente, has decided that the selection of those to whom portions of the income, commonly called scholarships, are to be granted, belongs to the group of administrators, presided over by the Bishop for the time being of this Diocese. And it is hoped that this will be sufficient to end all the controversies that have been raised on this matter for many years."

[*Latin ed. p. 270*]

^70 NICENE. Sed cum hic non expressum esset quibus viris coetus administratorum constare deberet, nec verbum esset de pensione, cuius frugebatur Capitulum, hinc iterum sorores De la Fuente, ope Episcopi, presso illa S. Q. institerunt ut denuo in proposito sententiam suam ediceret. Tunc plura iterum deducta fuerunt, quae postremo ad S. C. C. utpote iam, uti asserebatur, praeventam, remissa sunt. Disceptatio synoptica. Ea quae modo petunt a S. C. C. sorores De la Fuente ita Episcopus refert: quod Episcopus Nicien. gerat primam partem in administratione et distributione 15 pensionum: quod capitulum alteram sibi non tribuat pensionem; quia hoc est contra mentem institutorum. Minime obscurum est, fundatorum voluntatem, etiam in piis causis, ut supremam legem semper habendam esse, ita ut pleno iuris favore gaudere soleat. Quae autem fuerit viventis voluntas non est argumentationibus et indiciis quaerenda, sed ab ipso fundatore declaranda uti tradit Card. De Luca De fideic. disc. 33 n. 22, quia iuxta Rotam decis. 417 n. 5, part. 19, tom. 1, inter recent, voluntas ab alio melius declarari non potest, quam ab ipso disponente. Quid autem mente volutaverint in ipso pii operis exordio sorores De la Fuente non potest melius quam ex ipsorum declaratione erui. Neque dici potest prius aliter pias sorores res disposuisse quoad pensiones seu bourses, et proinde non posse progressu temporis iam statuta mutare. Etenim ea quae deducuntur, quidquid canonici dicant, nulla subscriptione aut ratihabitione approbata fuerunt, sed ab uno Capitulo peracta apparent. Ceterum quae earum voluntas in fundationis limine extiterit, ex iis quae retulit P. Vigon, consiliorum omnium particeps, cui primitus reditus bis mille libellarum Episcopo tradendi crediti fuerant, evidentissime liquet. Quod si postea pii operis executionem Capitulo demandarunt, id accidit quia a Canonico Theologo circumventae sunt, ut idem religiosus IURA FUNDATORUM.

[*Latin ed. p. 271*]

NIGIEN. 271. It is asserted that a certain individual was wronged. Given that these circumstances exist, and even if it were the case that the will was initially expressed differently, this would not benefit the Chapter, since it appears that the rule applies that those who are mistaken have no will re-

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garding the text. I. nothing common ff. concerning regulations, laws. Moreover, it would at least seem uncharitable to deny the founders the freedom to, over time, perfect those things which they decreed in the institution, as Pitonius seems to indicate in *De contr. patr. all.* 95, no. 23, where he also cites authorities such as Vivian, *Caod.*, and Monacelli. This is especially to be said if there are reasons that compel the will of the founder to be either changed for the better, or declared. In the case of this matter, it might be gathered that such reasons are not lacking from those things that are brought forth. Furthermore, the Sisters of La Fuente recall that the Bishop can better than the Chapter discern those who aspire to the priesthood, and distinguish those who possess greater titles, and who are pressed by poverty. All the more so, it seems that the Chapter, in the granting and administration of pensions, did not have before its eyes those norms which were desired at the very beginning of the foundation. Many things are brought forth to demonstrate this. Furthermore, some add things which seem to suggest that the Chapter, or its administrator, did not conduct themselves properly in the administration of the pious work. Therefore, the Prelate states that, already from the Sacred Congregation of Bishops and Regular Canons, according to its own judgment and the prayers of the Sisters of La Fuente, the matter was concluded, as he affirms he learned from the mouth of the aforementioned Prefect of that Sacred Congregation, although this cannot be gathered from the aforementioned rescript of October 8, 1883.

DEFENSE OF THE CHAPTER. The advocate who defends the interests of the Chapter presents a summary with restrictions. In the narration of the facts, while praising the generosity of the Sisters of La Fuente, he suggests that others were deceived by their counsel, so that they would act contrary to a perfect donation between living persons, and deny to the Chapter what they had previously...

[*Latin ed. p. 272*]

272. Regarding the endowment: Whether it was granted as compensation or as an act of beneficence, it is affirmed that the endowment was transferred to the Chapter. This transfer was confirmed by written documents from the Bishop Sola, the predecessor, the Chapter itself, and especially the Canons and Theologians, so that not only was the Bishop pleased with this arrangement, but also the Canons, in the Chapter meetings of January 22, 1872, spontaneously decided to establish a commission from within the Chapter, presided over by the Bishop. Furthermore, the advocate adds that the Chapter, in the meetings of February 3, 1879, broadly approved the petition and the articles presented by the Bishop, as is abundantly evident from the records. The Bishop testifies that the Sisters of La Fuente rejected this agreement, and for nearly twenty years they have raised complaints in numerous letters, claiming that they were deceived by the Chapter in the

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establishment of the pious foundation, and that they contributed nothing to the Chapter beyond the necessary expenses, contradicting the specific clause which stated that one of the portions was reserved for the aforementioned Chapter, either as compensation or as an act of beneficence, by the favor of the same Chapter, to whom they had entrusted all their trust and management. They rejected all agreement because of the condition attached to the articles, namely, renouncing any claims and actions brought before the civil court against the Canons, the Dean, and the Treasurer of the Chapter. The civil court readily granted their petition, because formalities are required, and if these are lacking, the foundations of trust are undermined, and the pious cause is maintained only in conscience and in the privilege of the cause itself, if at all it is based on the will of the testators. The judgment of the arbitrator, chosen by the Sisters of La Fuente themselves, is also affirmed to be invalid, as it favored the Chapter, either regarding its validity or regarding its proper administration. Therefore, all controversy should have ended. With these points in mind, the advocate for the Chapter maintains that not only is the foundation of the pious work valid, which was entrusted to the Chapter of the Cathedral Church, but also that it is entirely complete.

[*Latin ed. p. 273*]

NICIEN. 27a: The donation of the remaining portion is to be made in favor of the Chapter, so that it cannot be revoked. Furthermore, since it is established that nothing absurd is found if the Bishop does not interfere in the administration of the funds of the foundation, as in the case of disbursements concerning confraternities, according to what Bassus states concerning sodalities, *Quaest. VII* n. 17, the authority of the Ordinary remains "sartam tectamque," that is, clearly and openly, by the sanction of Chapter 9, Session XXII of the Council of Trent, where administrators are obligated to render an account of their administration. "And if, by custom or by some constitution of the place, an account must be rendered to those to whom it has been entrusted, then the Ordinary must also be included, etc." He reproduces the most important articles of the foundation for the support of clerics and for the payment of the Chapter's remuneration. He affirms that this provision was written in clear and explicit terms, so that it requires no interpretation of the words or the will, for one must not depart from the written word, according to law 3 and following. "Since there is no ambiguity in the words, the question of the will is not to be admitted, as Averanius widely teaches in *Interpret. Iur.*, book III, chapter 18, n. 4. The speaker further argues that no doubt can arise concerning the validity and lawfulness of this same foundation, especially since the donation was made for a pious cause, and was not made under any legal compulsion, for the Sisters of La Fuente had long ago, without the suggestion of the Chapter, decided to make a donation in favor of the ecclesiastical vocation

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of young people. He demonstrates that this foundation possesses all the qualities required by civil and canon law authorities, among whom is Scmalzgrueber in *De Donation*, title XXIV, n. 2; namely: 1. that the donor must have the power to donate, or to alienate his property; 2. that he must intend to donate, or to irrevocably transfer ownership of it to the donee; 3. that he must manifest this intention by some external sign to the donee. He believes that these requirements and conditions are clearly confirmed in the case, since the Sisters of La Fuente freely enjoy the power to dispose of their property, since they are not daughters of a family, nor are they under the guardianship or power of a husband, and since the foundation has been accepted for twenty years.

[*Latin ed. p. 274*]

274. NIGIEN. Having complete jurisdiction. Therefore, the matter has passed into the dominion of another, and no opportunity for repentance is given. Furthermore, it could not be maintained that there was a place for the revocation of the donation due to abuse and ingratitude on the part of the beneficiary. The canon Fabre affirms that the Chapter was concerned not with being considered ungrateful, but with complying with the wishes of others. Moreover, according to canon law, it would not be valid for Somãa to seek redress from a civil tribunal and to easily expect the nullification of the foundation due to a lack of solemnity and lack of will. Furthermore, this would offend propriety and religion, since pious causes should always be upheld, regardless of how the will of the testator or donor may be established, as De Luca states in *De testamentis*, number 2, section 15: "Two witnesses are mentioned in chapter *Relatum*, but not demonstratively, but rather as an example, namely, for the simple natural proof by which dispositions for pious causes are satisfied, rejecting any solemnity of positive law to which a pious cause is not subject; therefore, any other form of natural proof is valid." This is what Gonzalez had previously concluded in the cited work, chapter *Relatum*, number 13: "Therefore, legacies left for pious causes must be upheld and fulfilled, even if they would not be defended by written law." And, in addition to others, the Sacred Congregation has also declared the validity of the pious cause, even after declaring the will null, as evidenced by the resolutions issued in Ripatransone, *Nullitatis* of March 11, 1858, and in Fermo, of the same title, of July 30, where the following questions were proposed: "Does it appear that the will of Anna Garulli is null in this case, etc., and to what extent is there a basis for derogating from the will in this case?" The response was: "To the first question, affirmative, the pious legacy remains firm. To the second question, provision is made in the first." And, more forcefully, he continues, this must be maintained, because once the right in the matter has been acquired by the Chapter through prescription, therefore, since the matter is no longer complete, a prejudice cannot be inflicted on a third

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party against their interest and honor, nor can the saying be valid that it is permissible to do what does not harm you and benefits another, according to the teaching of the author Costa in *Tractatus de re integra et non integra*, Book 1, preliminary section 5, number 3. "By..."

[*Latin ed. p. 275*]

NICE. 275. The solution of the price, or the matter in question, ceases to be considered complete when, through tradition, the thing is no longer whole; for, indeed, true repentance is not admitted when the favor of a pious cause is present. Finally, the defender believes it must not be overlooked that the Chapter and Canon Fabre, the procurator, considered the controversy to have been concluded since 1880, through an arbitration chosen by the Sisters of La Fuente, namely, "the well-known and honest banker Colombo," who testifies not only to the proper management of the Chapter, but also to their complete satisfaction. How this compromise was reached is explained, and it is shown that this matter should have concluded legally, according to Justinian, Codex, I, 1, Cap. II, 56: "It is often decreed that a matter arising from an arbitration cannot be appealed." And this is also maintained by Schmalzgrueber, lib. 1, Tit. 43; Reiffenstuel, lib. 2, cod. tit. n. 17, etc. And even if experts are chosen by the parties outside of court, they are in the place of arbitrators. 3 Rota Dec. 462 n. 1 part. 18 rec. etc. With these and other observations, the following doubts were to be clarified concerning the Bishop of Nice and his role in the administration of the pious endowment "De la Fuente" in this case. II. And how the division of funds or revenues carried out by the Chapter in this case should be approved. RESOLUTION. After discussing the matter, the Sacred Congregation of the Council decided to respond as follows: To I: Affirmative; the constitution, according to the will of both pious foundresses, is with an administration of four members; of whom two are chosen by the Bishop, two by the Chapter, under the presidency of the same Bishop, and furthermore. To II: Negative in all respects, and furthermore. From which it is gathered: I. In pious causes, the will of the founders must be held as the supreme law. II. The one disposing can declare his own will better than any other; so that if the disposer,

[*Latin ed. p. 276*]

276 NICIEN. may act in the living, without needing any indication or argument to declare his will. III. What they intended to establish from the beginning of this pious institution; which they have endeavored to place entirely under the protection and direction of the Ordinary. VRH-BOSNEN. IURIS. On August 29, 1891. Session 24, chapter 12, concerning reform. From ancient times, in the city of Seraievo in Bosnia, only one parish is recorded, which was previously administered by the Brothers Minor of St. Francis, but since the year 1882, it has been under the jurisdiction of

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the Ordinary and is governed by a secular priest. This parish formerly had its own church, which also contained a house for the parish priest's residence; but, these were unfortunately destroyed by fire in the year 1879, so it became necessary for the parish priest to perform his duties in private houses. However, when, in that region, the most sacred ecclesiastical hierarchy was established, and the Archbishop of Vrhbosna fixed his seat in Seraievo at the beginning of the year 1882, it seemed opportune that the parish priest, together with the metropolitan chapter, should gather in the small church, dedicated to St. Anthony, which was the only one in the city, to perform the sacred ministrations. It was clear to all that neither had obtained a permanent residence there, and therefore, since matters were arranged with the consent of all, any collision of chapter and parochial rights was avoided. In the meantime, in the year 1884, the foundations of the new church of the Most Sacred Heart of Jesus were laid, which, with God's help, was built over a period of five years, and solemnly consecrated on September 14, 1889. Then, with the approval of the civil authorities, the small church of St. Anthony was abandoned by the secular clergy and returned to the Franciscan community. COMPENDIUM OF THE FACTS.

[*Latin ed. p. 277*]

BOSNIA. 277 Concerning the nature of this new church, there was disagreement between the chapter and the pastor. Hence, it seems that something of its history suggests a certain truth. From alms collected from everywhere, the initial sum amounted to 240,000 livres; these were kept in Vienna, at the ministry of Bosnia. Then, the then-Archbishop requested that a cathedral church be built. Minister Kallay agreed and decided that the Bosnian government should provide approximately 70,000 florins, since the collected money was not sufficient. The Archbishop believed that this money was to be given by the government for the construction of the cathedral, just as other money had been collected for this purpose. However, during the five years in which our church was being built (1884-1889), the government repeatedly stated that it was not building a cathedral church, but a parish church. This statement was very unpleasant to us all, especially since the exterior construction was being directed by the government. Knowing that the government could not change the purpose of that earlier money collected for the erection of the cathedral church, the Archbishop did not wish to argue with it, hoping that it would cease to insist on its preconceived idea. But when the church was finished, and the Archbishop of Vienna wanted to ensure that the old church of St. Anthony, which had previously served as both a cathedral and a parish church, would in the future serve as the parish church, and that the new one would be considered the cathedral, Minister Kallay refused to agree, but said that he wanted the new church to serve as a parish church, with the intention of building another, larger cathedral church later. Although I did not take this promise

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very seriously, the intention was serious, that the new church should serve as a parish church. I went to the Apostolic Nuncio, the Most Reverend Monsignor Galimberti, and explained everything to him in person. He said that one should not contradict the minister, since the same church could serve very well as both a cathedral and a parish church. From that time on, I immediately began to think about how a parish house could be built near the new church. And it succeeded. A new parish house was built near the new church, with the consent of the Vrhbosna chapter; for this house, the government also provided funds.

[*Latin ed. p. 278*]

278. VRHBOSNEN: Subsidium dedit 2,000 florins; totius domus pretium est 14,000 florins. Notum est, gubernium pro interna decoratione nostrae Ecclesiae quoque multa contribuisse, licet maiori ex parte nostra cura interna decoratio facta sit. Insuper advertendum est gubernium nihil contrarii facturum esse, quomodocumque inter capitulum Vrhbosnense et parochum Seraievensem causa pendens componatur, dummodo nova Ecclesia ut parochialis quoque consideretur; in contrario casu se opponeret. Igitur tum capitulum Vrhbosnense, cum parochus Seraievensis in novam ecclesiam labente anno 1889 venerunt, atque hic unusquisque sacras functiones peragere coepit. Attamen cum capitulum, templum SS. Cordis Iesu unice uti cathedralem ac parochum tamquam temporarium hospitem haberet, et e contra parochus sustineret ecclesiam insimul esse cathedralem et paroecialem, statim contentiones quoad mutui iuris limites enatae sunt. « Rebus ita stantibus, prosequitur Praesul, debui determinare, qua ratione in eadem ecclesia functiones capitulares et parochiales possent obiri, quin confusio oriretur. Semel ac iterum capitulum Vrhbosnense vocavi in sessionem, ut amico modo quae in praedictum finem necessaria essent determinarentur. Ideo Archiepiscopus sequentem normam proposuit ad iura utriusque partis determinanda. « Caput I. - Iura Capituli Vrhbosnensis. « Titulus L - Administratio ecclesiae cathedralis Ss. Cordis Iesu Seraievi pertinet ad capitulum Vrhbosnense, salvis iuribus Archiepiscopi Vrhbosnensis. « Titulus II. - Reditus ecclesiae cathedralis administrat capitulum Vrhbosnense. « Titulus III. - Ad reditus ecclesiae cathedralis pertinent: 1) donationes factae intuitu ecclesiae cathedralis; 2) eleemosynae omnes, quae sub sacrificio missae conventualis aliarumque missarum celebrandarum variis horis diebus dominicis et festis colliguntur, exceptis sub missa paroeciali; 3) eleemosynae omnes, quae a fidelibus in loculis ponuntur.

[*Latin ed. p. 279*]

VRHBOSNEI X. 279 4) Of funds derived from the ringing of the three largest bells. "Title IV. - From these revenues, expenses are provided for the procurement of furnishings and other necessities for the cathedral church.

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< Title V. - The remainder of the funds is conserved for the repair of the roof, retaining one-third of the revenue from the bells for the purchase of new bells. If the governing body is unwilling to contribute to the necessary repairs of the roof, and if sufficient funds are lacking, all those who are legally obligated to contribute must be compelled to contribute to this purpose: the Archbishop of Vrhbosne, the chapter of Vrhbosne, all the parish priests of the entire archdiocese, etc. " Title VI. - The chapter of Vrhbosne celebrates the conventual Mass and the Divine Office, and other functions, daily in the cathedral church throughout the year, as any chapter in the Catholic Church is accustomed to do according to the canons. Therefore: "1. It will sing the conventual Mass on Sundays, and a solemn Mass on feast days, on which the Archbishop does not celebrate solemnly; "2. On more solemn days, it will also sing Matins with Lauds and Vespers of the Divine Office, when the clergy are present in the choir; "3. On the days of February 2nd, Ash Wednesday, Palm Sunday, the three days of the Greater Week, the feast of Saint Mark, and the days of Rogation, on the day of all the dead, and on the night of the Nativity of Our Lord Jesus Christ, it will perform the customary functions. On these days, the parish priest will not perform these functions in the cathedral church, but will remind the people to join the chapter in performing them. " Title VII. - The conventual Mass is always celebrated at 9 o'clock; the Divine Office is recited or sung in the choir at 9% before noon, and after noon at 3 o'clock in the months of November, December, January, and February; at 4 o'clock in the months of March, April, September, and October; at 6 o'clock in the months of May,

[*Latin ed. p. 280*]

June, July, August. – Since throughout the entire year, on Sundays and feast days, at 4 o'clock in the afternoon, the Litany of Loreto and Benediction are held with the parish priest, therefore, during these days in the months of March, April, September, and October, the Divine Office will be recited at 4 o'clock. "Title VIII. – The Vrhbosnense Chapter has its own sacred furnishings, with its own cupboard in the sacristy, which it shares with the parish priest." "Title IX. – It is the duty of the Vrhbosnense Chapter to ensure that the cathedral is in a condition befitting the sanctity of the place, and that it is equipped with all necessities." < "Chapter II. – Rights of the Parish Priest of Seraievo. " "Title I. – The principal parish of the city of Seraievo is perpetually united with the cathedral church of the Most Sacred Heart of Jesus." "Title II. – The parish priest performs all parochial functions in the cathedral church, without hindering the functions of the Vrhbosnense Chapter or the Archbishop." "Title III. – The parochial Mass is always held at 10 o'clock, following the conventual Mass." "Title IV. – The parish priest uses the same altars and the same sacristy as are used by the Vrhbosnense Chapter. It is permitted for the parish priest to use his own wood to fuel the furnace in the sacristy." "Title V. – In the sacristy,

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the parish priest has his own space for a cupboard, in which he places the sacred parochial furnishings." "Title VI. – The parish priest provides for the sacred vestments, the sacred vessels, and all the sacred furnishings, which he uses both within and outside the church, including at the burial of the dead; 1) from the alms collected during the parochial Mass; 2) from the fees for the ringing of the three smaller bells; 3) from donations given for parochial purposes." "Title VII. – The money obtained from the alms collected during the parochial Mass, from the fees for the ringing of the three smaller bells, and from donations given for parochial purposes, is used for the following purposes:

[*Latin ed. p. 281*]

VRHBOSNEN. 281 The number of parishes constitutes the revenue, which the parish priest administers.

*Title VIII. - Three smaller bells are parochial, just as three larger ones are cathedral bells. One-third of the money obtained from the ringing of the three smaller bells belongs to the fund for the purchase of new bells.

*Title IX. - That which remains of the money annually from the revenues designated for the use of the parish priest is transmitted to the Ordinariate at the end of the year, so that it may be placed in a fund for the erection of a new church and parish house in Seraievo, with the time of erection to be determined.

*Title X. - For the necessities of the parochial functions, such as wine and candles, the parish priest will either procure them himself, or he will pay a tax to the Chapter of Vrhbosna for these items.

*Title XI. - The parish priest has the right to have his own servant or sacristan in the cathedral church, who will ring the parochial bells, who will accompany the parish priest when he carries the Most Holy Sacrament to the sick, who will carry a vessel with water to the burial of the dead, and who will prepare everything in the parochial sacristy for the parochial Mass.

*Title XII. - The parish priest of Seraievo will render an account of his expenses to the Ordinariate at the end of the year, as do the other parish priests in the archdiocese of Vrhbosna. However, the Dean of Vrhbosna has the right to the parochial house, the parochial bells, the baptistery, the parochial chest with the parochial furnishings, but not to visit the cathedral church.

*Title XIII. - The parish priest has no right to repair anything from the altars, or anything else, or the church itself.

*Title XIV. - A poor person who has died is buried free of charge, with half of the three parochial bells rung, otherwise a tax is paid for the smallest bell, 1 florin; for the middle bell, 1 florin 50 kreuzer; for the third, larger bell, 2 florins 50 kreuzer.

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*Title XV. - For the ringing of the smallest of the three...

[*Latin ed. p. 282*]

282 VRHBOSNEN. The tax for the cathedral bells is 8 florins for a moderate ringing, 12 florins for a medium ringing, and 25 florins for a full ringing. This regulation was accepted by the parish priest of Seraieven, but not by the chapter; and he urged the superiors of the Order of St. Canice to reform it, stating: "I. In the administration and governance of the cathedral church of the Most Sacred Heart of Jesus in Seraieven, in the case presented, does the parish priest also have a role, besides the Archbishop and the chapter, or not? II. Does the right to receive alms from the faithful offered during the parish Mass, as described above, belong to the parish priest or to the chapter? III. Is the alms offered for the ringing of the bells to be received and administered entirely by the chapter? IV. Does the care for maintaining order and cleanliness in the church belong solely to the chapter? V. Does the care, in particular, regarding the eternal light, belong to the parish priest or to the chapter? VI. Do the solemn functions in general, and in particular: the blessing of the water on the eve of the Epiphany, the blessing of the ashes, the functions of the sixth day and the Sabbath during the major week; also the blessing of the font before Easter and on the eve of Pentecost, belong to the chapter? VII. Could the blessing of the candles on the feast of the Purification of the Blessed Virgin Mary and the blessing of the palms be delegated to the parish priest? VIII. Regarding the parish Mass and the Vespers, i.e., the Lauretan Litany and the blessing with the Most Blessed Sacrament, on Sundays and feast days, should the customary practice be followed? IX. Are the processions on the feast of St. Mark and on the days of Rogation to be led by the parish priest?" The Synoptic Discussion: It was noted that some of the questions raised seemed superfluous, while in others...

[*Latin ed. p. 283*]

VRHBOSNEN. 28. Concerning the questions which pertain to it, the Archbishop and the Chapter, as can be gathered from their letters, are fully in agreement. Therefore, it is considered that the first, fourth, and sixth doubts should not be considered; and the eighth is likewise omitted, since the Chapter says nothing further concerning the custom asserted therein, if indeed it deserves to be called a custom, and the Archbishop is entirely silent in his response to the Sacred Congregation. On the contrary, from what the Chapter and especially the Archbishop write, a second point of contention appears, which still needs to be resolved. The first, which is the root of this matter, concerns the defining of the nature of the new church of the Most Sacred Heart of Jesus; the second concerns the obligation of celebrating Mass with singing on feast days, and of singing Matins with greater solemnity, which the Chapter believes should be eliminated

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according to title 6 of chapter I.

DEDUCTIONS OF THE CHAPTER. The Chapter therefore states that the newly constructed church should exclusively be considered as a cathedral, and it argues that this can be proven from the will of those who first provided the money. For, as the Prelate himself affirms, the money was originally collected for the purpose of building a cathedral of Vrhbosnen, and not a parish church. Furthermore, canon law, when it is certain and determined, must take precedence over the will, as it is accustomed to do in all things, as stated by the Most Holy Audience in decree 339, number 8, page 17, among the recent decrees. Nor would it be valid for the government to have spent more on the new church, and therefore its will should also be kept in mind. If the sum of money contributed by it was less than that which was contributed by others, then it is necessary to refer to those earlier contributions to determine what should be considered accessory, and what should be considered to define the nature and original purpose, according to I. Cod. fin. De non num. pec. I., also according to the code De iur. dot., and also according to Regulation XLII, section VI, of Canon Law. Furthermore, a parish benefice has never been established in the new church, nor has it been canonically transferred from the old church to this one. Therefore, since the temple of the Most Sacred Heart of Jesus lacks the things which the Sacred Canons require in this matter, it cannot, for any reason, be called a parish church. And perhaps this has also been persuaded to the Prelate himself.

[*Latin ed. p. 284*]

"284 BOSNIA. Previously, it was the case that, in several of its acts, and especially in the pastoral letter of August 10, 1889, concerning the consecration of the church, the chapter did not recognize the parochial status of the new church. Given these circumstances, if a priest resides there as parish priest, it does not seem equitable to attribute anything from the revenues of the cathedral church to him. Therefore, it is particularly of the opinion that those titles in the norms or statutes of the archiepiscopal chapter should be abolished, which assign to the parish priest alms collected in the parochial Mass. It readily concedes that the parish priest should receive what is given "from donations made with the intention of benefiting the parish or for necessities pertaining to parochial functions"; but whatever is collected in the church is understood to belong to the church itself. Indeed, the administration of alms collected in the church appears to belong to the canonical authorities, as stated by Cardinal De Luca in *De Praeminen.*, disp. 11, n. 17: "Oblations which are made in the church belong to the church and its rector, except those which are given to the poor, as stated by Merlin, decrees 257, other decrees 37, page 5, recent edition." And this applies even to the exclusion of the parish priest, as responded by the Sacred Congregation of Rites in the decree *Urbis et Orbis* of January 12, 1704, regarding question

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28. Furthermore, a custom seems to exist. The chapter writes: "Regarding the exception of the alms which are collected under the parochial Mass, we observe that in all of Bosnia, it is not the custom for the parish priest to receive anything from the collected alms; but all offerings, whether placed on the altars or collected as people pass through the church, are spent on the fabric of the church and other uses of the church. Since the chapter is concerned with all that pertains to the upkeep of the church, this exclusion of the alms, which, like other alms offered for the same purpose under other Masses, is offered, does not seem to be legally justified." Nor should it be said that the parish priest is obligated to provide for the purchase of sacred vessels and other necessary items for himself, according to title 6, chapter II of the aforementioned decree, for the canons state: "The expenses for the service rendered throughout the cathedral are also borne by the chapter from the same revenues; and it will be so, that..."

[*Latin ed. p. 285*]

BOSNIA. 28. The pastor and his chaplains should fully satisfy the requirements concerning all expenses, which in any way are connected with the parochial office.

The canons almost repeat this regarding the revenues derived from the ringing of three smaller bells, assigned to the pastor by the Archbishop. For the bells, like the organ, ornaments, and all other things necessary for the honorable worship of God, are included under the name of the church building, and are considered a part of it. *De sacris utens.*, book 8, chapter 2, number 3. Amostazo, *De causis piis*, book 4, chapter 1, number 25. Therefore, since the church of the Most Sacred Heart of Jesus is a cathedral, and its governance and administration, as the Archbishop himself decrees in title 1, chapter 1, must be with the chapter, the distinction made regarding the bells appears to lack any juridical foundation.

Six bells, the canons conclude, "cannot be both cathedral and parochial, neither by the intention of the benefactors, nor by the place where they are located, nor by the purpose to which they serve."

Furthermore, the payment of money, which is offered by the faithful for the ringing of the bells, which the Archbishop proposed in title 5, chapter 1, and also in title 8, chapter 2, the chapter considers entirely unacceptable. For, as stated above, the bells belong to the church building; therefore, if any of them were to suffer damage, or if even new bells were to be installed in a new tower, the church building itself should certainly bear these expenses.

If the Archbishop intended to allocate one-third of these revenues for the purchase of bells for the construction of a new church, the canons proclaim that this is entirely inconsistent with the sacred canons. And taking advantage of this opportunity, they also declare title 9, chapter 2, to be invalid, which states: "Whatever remains of the money, which, from the revenues designated for the use of the pastor, is transmitted to the Ordinary at the

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end of the year, should be used, in due time, for the construction of a new church and parochial house in Seraievo."

For it is reasoned: "A fixed determination of a portion of the church's revenues for the construction of a new church...

[*Latin ed. p. 286*]

286 VRHBOSNEN. The rectory and parish house in these places do not seem to be founded in canon law, since it is established that ecclesiastical funds can only be spent in those places to which they are destined; and in our case, that destination is no other than the adornment and maintenance of the cathedral church; nor can this church, as a mother, be obligated to contribute anything for a daughter which not only does not exist, but of which there is no hope of it existing in the near future. > The canons, coming for the sacred functions, willingly admit their celebration on more solemn days, as the Archbishop has decreed, since the chapter pertains to the rector of the cathedral church. However, they add: "that of the aforementioned functions, namely the blessing of the Candles and that of the Palms, if the law were not violated thereby, for the sake of the gathering of the people, it would be more fitting for the parish priest than for the chapter to perform them." > They believe that this reason also applies to the processions on the feast of St. Mark and during the three days of Rogations. Finally, concerning that part of the decree, title VI, chapter 1, where it is written: "1. The chapter shall sing the conventual Mass on Sundays, and the solemn Mass on feast days, unless the Archbishop celebrates; 2. On more solemn days, it shall also sing Matins with Lauds and Vespers of the Divine Office, when the clergy are present in the choir," they observe: "The canons of Vrhbosnen have, until this day, daily recited all parts of the Office, clearly, in a loud voice, with a uniform tone, in the manner of psalmody. They also celebrate the conventual Mass daily: one, or two, or three, according to ecclesiastical prescriptions. It has always been the conviction of all the canons that this difference from the general norms is undoubtedly permissible: because it is permitted by a dispensation which was granted to the chapter by the Holy See on April 26, 1883, number / (Sacred Congregation of Rites), in which it is stated: 'The canonical hours are recited (or sung) according to custom, and the conventual Mass is sung (or read).' This dispensation has been given a place in the statutes subsequently established by the chapter and approved by the Most Illustrious Ordinary."

[*Latin ed. p. 287*]

VHRBOSNEN. 287. Certamente, as razões apresentadas são suficientes para justificar o pedido de uma dispensa, a fim de que a questão seja encaminhada à Santa Sé. De fato, existem apenas quatro padres, sem nenhum vicário coral ou capelão, de modo que eles mesmos sempre assistem ao

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coro, e muitas vezes, apenas três, ou até mesmo apenas dois estão presentes, o que acontece quando um ou outro está doente, ou quando outros assuntos, mais ou menos necessários para o bem da igreja e das almas, impedem que eles assistam ao coro. Portanto, eles não poderiam ter assistência para o serviço solene, nem haveria um canto na igreja que contribuísse para a edificação dos fiéis. Além disso, devido à falta de recursos, eles não têm um diretor de coro que toque o órgão e dirija o coro, ou que cante na missa. Essas circunstâncias não mudaram em nada desde 1883. "A isso pode-se acrescentar que, como a prática ensina, o canto não parece ser essencial para o serviço coral, já que seu objetivo é 'comunicar aos presentes na igreja as divinas louvagens, o que se alcança tanto cantando quanto recitando em voz alta', como observa Navar, no capítulo. Quando art. 6, Sánchez, Cons. mor., livro 7, capítulo 2, dúvida 8. Portanto, Scarfantonius, em sua obra para Ceccop., livro II, título VII, afirma que não se encontra 'nenhuma lei, nem divina nem positiva', mas que deve-se preservar o costume local, o que talvez não seja totalmente contrário ao caso de Vrhbosnen.

OPINIÃO DO ARCEBISPO. Por outro lado, o Arcebispo defende a razão que ele propôs em todos os aspectos, e ele mesmo apresenta argumentos que ele acredita serem dignos de consideração. E, em primeiro lugar, ele se refere à natureza da igreja de SS. Coração de Jesus, e, além do que já mencionei acima em relação aos fatos, ele acrescenta: "Sarajevo tem mais de 30.000 habitantes. Na paróquia de Sarajevo, há mais de 4.000 católicos, dos quais 800 vivem em vilas, e os outros na cidade. Este número não inclui os militares. Há oito anos, o número de católicos em Sarajevo não ultrapassava 700. Portanto, ele cresceu rapidamente, e há uma certeza de que continuará a crescer, e que..."

[*Latin ed. p. 288*]

288 BOSNIA. Quotidie crescit numerus catholicorum. Unde, post nonnullos annos, sine dubio, necessaria erit erectio novae parochiae in ipsa urbe, iam ob nimiam eius extensionem; sed nunc iam urget necessitas erigendae novae parochiae in agro, cum parochus Seraievensis, obrutus variis negotiis, vix potest visitare rusticolas, nullo modo autem, sicut conveniens esset, eos instruere. Nova cathedralis ecclesia quasi in medio urbis sita est, ita ut, si aliae rationes non urgerent, debeat inservire etiam ut ecclesia parochialis. Si ergo alia parochialis in urbe instituatur, prima coniuncta manere oportet cum cathedrali in perpetuum. Non potest autem administrari ab uno ex canonicis, cum tantum quatuor sunt; ergo administretur oportet prout hucusque a parocho non pertinente ad canonicorum gremium. Cum nova ecclesia SS. Cordis Iesu in Seraievo sit dimidia ex parte cathedralis, dimidia vero parochialis, ego quoque optimum duxi destinare ut inserviat tam ut cathedralis ecclesia, quam ut parochialis... Noto me quidem ad populum archidioeceseos ante consecrationem scripsisse futurum esse, ut die 14 Septembris ecclesia

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cathedralis consecratur, quin mentionem fecerim de parochiali ecclesia, sed frustra capitulum Vrhbosnense deducit, mea quoque persuasione praedictam ecclesiam cathedralem, quum ex una parte nova ecclesia qua parochialis ad integrum populum non pertineat, ex altera vero quum plus quam inconveniens esset, si ego quaestiones nondum compositas coram populo tractavissim.

Relate ad eleemosynas et campanarum distinctionem, ita archipraesul ratiocinatur: « Capitulum Vrhbosnense hos duos titulos non approbat duabus ex rationibus: a) eo quod eleemosyna, quae sub parochiali massa colligitur, eximatur a potestate eiusdem capituli; b) eo quod tres minores campanae parocho adiudicatae sint. » Ad primum respondeo, hoc necessarium esse. Nam parochus, praeter sacram suppellectilem propriam, necessario debet habere et solvere servum sive sacristanum, qui eum comitetur in funeribus, in portando Viatico ad aegrotantes et in ceteris functionibus parochialibus. Praeterea...

[*Latin ed. p. 289*]

Bosnia. 289. This is what is required. Indeed, even with the consent of the chapter, the parish priest ought to have his own sacristy furnishings. If he himself possesses the parish alms, he can easily acquire decent vestments, or he can collect from the parishioners the necessary money which is lacking, since the alms alone are scarcely sufficient to purchase all that is needed. Furthermore, if the parish priest were to depend on the chapter regarding sacristy furnishings, there would undoubtedly always be the return of worn-out vestments by the canons, so that perpetual quarrels would arise, and the people would be indignant, seeing how the parish priest uses worn-out sacred vestments, even though he receives alms and collections from the parishioners for the purchase of new ones. Finally, the parish priest, who has no right regarding the parochial alms, and who exerts no influence outside the church, so that the people contribute something for the purchase of sacred vestments and vessels for the priests, and for the necessities for funerals and Requiem Masses, could never be certain whether the money given in this way is truly used to purchase what is necessary for the parish priest. "As for the second matter, namely, the three smaller bells assigned for the use of the parish priest, I state, and I suggest and implore, that all six bells were promised by two predecessors of the Bishop of Laibach, but were purchased by the present Bishop, James Missin, along with the people. These bells were donated to our Church of the Most Sacred Heart of Jesus, but they were certainly donated to a church of this kind. Moreover, it would have been sufficient, and it is still sufficient, for me, or rather, I would say to the Bishop of Laibach, to determine in this way, as I have determined, and to do so with a good heart. Therefore, it seems well done that three larger bells are assigned for the use of the chapter, and three smaller bells for the use of the parish priest. The chapter contributed

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nothing for the bells; therefore, what right does it have over them? They were donated to our church, and since the relationships between the chapter and the parish priest have not yet been determined, it does not seem that it can claim any right over them. It seems prudent that one-third of the taxes be reserved for the purchase of new..." (Acta, Vol. XXIV, page CGLXXXI).

[*Latin ed. p. 290*]

290 BOSNIA. Concerning the purchase of bells, although there is no hope that they will be given again in due time, as they were given now, because a new hierarchy has been established here and all necessities are lacking. All six bells cost 18,000 francs. Therefore, it is necessary to reserve something for the purchase of new bells. The Chapter, so that it may never be in need, wishes to contribute something from its own resources for the Church, and therefore wants to claim the entire tax on all the bells, which does not seem just, indeed, it seems unjust, since later, when the current bells become useless with time, it would be impossible to buy others, if nothing were reserved for this purpose.

Furthermore, with regard to article 9 of the second chapter, it is observed: "It is certain that alms collected in the church cannot be used for anything other than the needs of the church; but it is also certain that, in urgent necessity, it has happened, and indeed without any canon objecting, that such alms have been used for the fabric of the parish house. Moreover, I do not know whether this entire question concerning alms deserves so many words, since throughout the entire year, the total amount collected is barely 500 florins."

Besides the parish connected with the cathedral church, two other parishes are certainly necessary, one in the countryside and one in the town of Seraievo. He who knows what has happened here in the course of eight years, I do not know how he can dare to say that there is no hope that another parish will be established soon.

Regarding the third point, the Bishop, in his decree, protects the blessings of the candles and palms, as well as the processions on the major and minor Litanies, and states that these should be performed by the Chapter rather than by the parish priest. "In other places, where the cathedral church serves only the canons, the canons usually perform these functions; therefore, in order that they may be performed more solemnly, I considered it necessary to establish by whom they should be performed, so that disputes may not arise between the parish priest and the canons." It seemed better to me that the aforementioned functions should be performed by...

[*Latin ed. p. 291*]

BOSNIA. 291 canonicals, rather than the parish priest, because elsewhere it is done in this way; because it is necessary that the Archbishop

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be present for some of these functions, and it does not seem fitting that, with the Archbishop and all the canons present, e.g., on the days of Purification, Palm Sunday, St. Mark's Day, and Rogationtide, the parish priest should perform the functions; because this is by no means contrary to the gathering of the people, since, e.g., on the days of Rogationtide, the procession always takes place very early in the morning, and this gathering is by no means diminished when the Archbishop sings Mass on more solemn days, not at the time of the parish Mass, but at the time of the conventual Mass; because the canons do not seem to be concerned so much about the gathering of the people as about being relieved of the obligation, as appears from the entire recourse to the Holy See. Indeed, the canons have obtained a dispensation to free themselves from other obligations, and they transfer these other obligations to the parish priest, but they do not allow themselves to be bound by any obligation, which is why they never sing Mass, whether conventual or otherwise, in their own church, nor do they preach, which they certainly do in other churches, where they are not obligated. "Finally, with regard to the last point of contention, this is what is reported: 'At the beginning, the Archbishop, the Vrhbosna chapter, and the parish priest performed their functions in a temporary chapel, in which, at the beginning, there was no organ, but only a harmonium. Therefore, it is not surprising that I proposed, and the Holy See approved, that the Vrhbosna canons should not be obliged to sing or solemnly celebrate Mass in such a chapel. But now a very beautiful church of the Most Sacred Heart of Jesus has been built, in which there is an organ, which costs more than 20,000 francs; I do not see why the canons should not, at least on Sundays, sing at least a sung Mass, if not a solemn Mass; I do not see what purpose the organ, which was purchased with the approval of even so large a chapter, would serve, if its use was foreseen to be impossible. They say that there are only four of them. But it does not matter. For although there are only four, one canon from these four would sing Mass every Sunday for all the years that we have been here, and he still does."

[*Latin ed. p. 292*]

292 BOSNIA. In the small church of the Sisters of St. Vincent, the Mass is celebrated solemnly, with assistance (among whom there is always a deacon, another canon), on certain days, on which days a third canon also celebrates a solemn Mass in the chapel of the other Sisters of the Divine Love; therefore, I rightly asked myself: how is it that, of my four canons, one can celebrate Mass among the Sisters of St. Vincent on any Sunday, while another can, at least on more solemn feast days, celebrate Mass among the other Sisters? Why, at least on Sundays, could not one canon celebrate the conventual Mass in the cathedral church, even if no Mass were celebrated among the Sisters? Such zeal does not seem to be from God: to say the

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conventual Mass without singing in one's own cathedral church, and to celebrate the same day a Mass with singing among the Sisters. It is also noted that, not even once within a period of eight years, has a conventual Mass been sung in the provisional church, even though the parish priest there celebrates the parochial Mass every Sunday with an organ accompaniment, which was later also purchased for the provisional church; furthermore, since September 14, 1889, when the new church was consecrated, not even once has a conventual Mass been sung by the canons in that church, to which a very large number of people attend, whereas every Sunday one canon celebrates Mass in the church of St. Vincent, and on more solemn days another canon celebrates Mass in the chapel of the Sisters of the Divine Love. But someone might say: there is no one to play the organ. Why does the parish priest always find someone to play the organ during the parochial Mass throughout the year, and why cannot the canons find someone? Certainly, he does not find someone for free, but he finds someone, and he can find not one, but several, who would gladly play the organ for a small salary. Furthermore, it seems entirely appropriate, not only when the clergy are not present, but also after two or three years, when even clergy are present in the choir, to sing Matins with Lauds and Vespers, at least on less solemn days throughout the year. "In this matter, one thing is certain: conventual Masses with singing are to be celebrated by the canons, and..."

[*Latin ed. p. 293*]

BOSNIA. 293 S.O. It was prescribed to the superiors concerning doubtful matters. August 5, 1737, at Lucidi, part 1, volume 2, concerning postulates, number 106. Concerning the other canonical hours, several Doctors state that it is fitting that they be recited on feast days, and that the Psalms be read aloud with devotion, and that this custom has been commended by the Most Holy and Religious Fathers, as Barbosa writes in the Summa Bullarum, volume 5, custom. These matters, both in practice and in law, having been considered, the following doubts were proposed:

I. Whether the church of the Most Sacred Heart of Jesus in Seraievo should be held exclusively *as a cathedral*, or even as a parish church, in this case.

II. Whether the alms collected during the parish Mass should be received and administered by the parish priest, or by the chapter, in this case.

III. Whether the distinction proposed by the Archbishop concerning the bells and the disbursement of revenues arising from their ringing, should be approved in this case.

IV. Whether the blessing of candles on the feast of the Purification of the Blessed Virgin Mary, and the blessing of the palms, as well as the processions on the feast of Saint Mark and of the Rogations, should be performed by the chapter, or rather by the parish priest, in this case.

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V. Whether the chapter is obligated to celebrate the conventual Mass on feast days, and to chant Matins, Lauds, and Vespers on more solemn days, according to the decree of the Archbishop in this case.

RESOLUTION. The Sacred Congregation, having considered the matter on August 29, 1891, decided to respond as follows:

To I: It should be held both as a cathedral and as a parish church.

To II: Affirmative to the first part, negative to the second.

To III: Regarding the reformulated doubt: Whether the arrangement of the Archbishop concerning the disbursement of revenues arising from the ringing of the bells should be maintained. Affirmative.

To IV: Affirmative, by the chapter.

To V: Affirmative.

[*Latin ed. p. 294*]

294 CORTONA. REGARDING THE SETTLEMENT AND RESTORATION. July 25, 1891. Session 25, Chapter 12, Concerning the aforementioned. Peter Leopold, the Great Duke of Tuscany, around the year 1783, assigned to the Chapter of the Cathedral of Cortona, under certain conditions, properties and other assets belonging to the suppressed Abbey of the Most Holy Virgin Mary, assumed into Heaven, located at Farneta. We do not know by what right the prince acted in this manner; nor can we, from what is recorded in the documents, precisely determine the nature of this assignment. It is asserted by the present canons that these assets were granted and transferred to their table, while their adversary, who is the plaintiff in the present case, claims that only the administration of these assets was demanded by the Chapter. However, this cannot be doubted, as the Chapter presented an account of the revenues and expenses relating to the aforementioned assets to the governing authority shortly thereafter, in order that certain obligations might be imposed upon them. These obligations were as follows: the payment of 110 scudi annually to the parish priest of Farneta; the payment of 40 scudi to the chaplain, who assists the parish priest in the administration of the sacraments in that extensive parish. Furthermore, the remaining sum of money was designated for other parishes, as well as for the Cathedral, in place of the parish priests and chaplains, to be paid annually by the Chapter from the aforementioned assets. Moreover, on April 1, 1886, a certain agreement concerning the aforementioned partial settlement was initiated between the Chapter and the prior parish priest of Farneta. Through this agreement, the Chapter granted to the said parish priest and his successors, perpetually, certain small fields and a rural house, as a partial settlement. As a result of this, the Chapter was left with only the obligation to pay the residual sum of 77 scudi annually. The parish priest, however, hoped for a greater benefit, which he would obtain from the aforementioned.

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COMPENDIUM FACTI (Summary of Facts):

[*Latin ed. p. 295*]

CORTONA. With greater reason for concern, the Chapter undertook the obligation of paying present and future taxes levied on the house and lands. However, the obligation of maintaining the Church and the canonical duties of the aforementioned parish, and of paying taxes pertaining to the house and Church, even in the future, remains with the Chapter. In recent times, due to civil laws that are contrary to ecclesiastical goods, the Chapter of Cortona, through legal proceedings, obtained a declaration that all properties already belonging to the Abbey of Saint Mary of Farneta were exempt from parochial taxes. Nevertheless, heavier and heavier taxes have been imposed each day, both on these same goods and on the sums of money paid by the Chapter to the parish priests. This has provided an opportunity for more and more disputes to arise between the canons and the parish priest of Farneta, some of which had to be brought before the Sacred Congregation of the Council. The parish priest stated that his proper salary and the stipend assigned to the chaplain were burdened with so many taxes that he scarcely had enough for his necessities, and it was impossible to find a helper to assist the chaplain in the care of the vast parish. Therefore, he requested that the Chapter be obligated to refund, both for the past and for the future, the sums that, according to the form of the agreement presented, are still paid annually, for the taxes commonly called "di ricchezza mobile e di mano morta," both to the parish priest and to the chaplain.

Summary of the Dispute. Firstly, the parish priest argues that the suppressed goods belong to the parish of Farneta, and that the Chapter of Cortona was only entrusted with their administration. This, he argues, can be proven from the obligation imposed in 1732 by the great Duke of Tuscany on the canons to present accounts of what was given and received, and also from the fact that the entire revenue then levied by the Chapter was distributed between the parish priests and chaplains. Furthermore, he adds that these aforementioned goods were recently exempted from taxes, because the Chapter itself declared "IURA PAROCHI."

[*Latin ed. p. 296*]

296 CORTONA. It has been demonstrated that the endowment of the Abbey has become a fitting provision for the parish, and therefore it is clearly not included in the law. The parish priest states that he does not have the documents necessary to fully prove this, but if the Chapter were compelled to bring forth all those things carefully preserved in the archives, it would be placed beyond all doubt, according to his account. Indeed, since the income from these goods has greatly increased, the parish priest believes that justice demands that at least a portion of this

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increase be allocated in favor of the parish priest and the chaplain. The parish priest seeks to demonstrate this increase, stating that the small plots of land which the Chapter ceded to him now yield approximately 50 scudi, whereas previously they yielded only 23 scudi. From this, it can be argued what an increase the entire patrimony, derived from the Abbey of Farneta, has brought to the Chapter of Cortona. Therefore, he believes that some assistance should be provided to him, if not in such a way that the provision assigned by the prince remains within the sum required by the Sacred Canons. And describing the miserable condition of the parish priest, he states that he has been forced to pay more taxes; after these have been deducted, the parish priest is left with a meager sum of 293.46 livres. He cannot be opposed, for St. Pius V, in his Constitution *Ad exequendam*, decreed that a fitting provision should be assigned to the parish priests, not less than fifty scudi; for as Reiffenstuel states in Book III, title 37, paragraph 23: "It must nevertheless be observed and it is entirely fitting to consider that at the time when this Bull was issued, namely in the year 1567, everything, at least in its parts, was of a much lower price, so that at that time, necessities of life were acquired at barely double the price compared to the present time; consequently, where at that time fifty or one hundred scudi were sufficient for a decent livelihood, today one hundred or two hundred are necessary, and therefore the passage of time must also be taken into account, according to the common saying, 'concorde tempora et concordabis iura.'" These words, if they were true at the time they were written, are surely seen to have far greater weight in our own age. With these considerations, the parish priest, from what he has stated above, feels obligated to...

[*Latin ed. p. 297*]

CORTONEN. 297. He argues that it is necessary for the abbot to provide for him from the abbey's resources, so that he may have at least what is sufficient for a decent livelihood. Finally, approaching the heart of the matter, he asserts that the right to demand sums exempt from taxes, commonly known as "<c di ricchezza mobile e di mano morta>," belongs to the parish priest, not only by virtue of the obligation that rests upon the canons to provide a suitable augmentation, but also from the very words of the instrument itself, which were mentioned above. For it is stated there that the prior undertook to pay the taxes on the lands and the rural dwelling attached to them, but not on other things, of which no mention is made there. Therefore, if the Chapter is obligated to pay the parish priest and the chaplain a suitable augmentation from the aforementioned resources, exempt from these taxes, it would be evident that the sums previously paid as taxes should be refunded to the plaintiff.

RIGHTS OF THE CHAPTER. On the other hand, the Chapter maintains that everything the parish priest has stated regarding his poverty and the

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inadequacy of the augmentation is said outside the choir, and therefore is not to be considered. Although the parish priest's condition cannot be called affluent, it is not proven that the canons are unable to improve his situation. Furthermore, regarding the assertion that the goods already belonging to the Abbey of Farneta were not granted to the Chapter, but were united to the Chapter's table with the beginning of the public instrument of the year 1786, it is not considered to be based on a better foundation. Indeed, concerning the documents that were said to be kept there and whose production was requested, the Chapter states: "The Chapter declares that it has no other reasons, nor does it possess any other documents to exhibit or send to the Sacred Congregation, other than those that it has already presented." Finally, concerning the revenues and burdens of the properties of the place of Farneta, it states: "If the parish priest pays heavy taxes, no less burden falls upon the Chapter; in fact, the matter has come to this, that said property is almost burdensome to the Chapter, due to the numerous taxes with which it is burdened." Furthermore, it observes that the taxes commonly known as "<c di ricchezza mobile e di mano morta>" are imposed by the treasury on the revenues received by the parish priest.

[*Latin ed. p. 298*]

298 CORTONA. It has been the case, and therefore, these parishoners should not have their property unduly burdened. Consequently, if these [taxes] are abnormal and unjust, it does not necessarily follow that they must be refunded to the parish priest by the chapter. With these and other matters noted, it was deemed necessary to resolve the following question: From what time is the Cathedral Chapter of Cortona obligated to refund to the parish priest and chaplain of Farneta the taxes commonly known as "di ricchezza mobile e di mano morta," in this case?

RESOLUTION. After considering the matter on July 25, 1891, the Sacred Council decided to respond: Negatively, and furthermore.

LEGATES FROM NUCERIA PAGANORUM REGARDING PARTICIPATION. August 29, 1891. By summary petitions.

SUMMARY OF THE CASE. After the aforementioned death, already since July 21, 1858, Joseph D'Auria, Bishop of Nuceria Paganorum, ordered that 72 ducats be deducted from the revenues assigned to the chapter and distributed equally among those canons who had attended divine services in the choir throughout the entire four-month period. The first four-month period begins from January 1st to April 30th; the second from May 1st to August 31st; the third from September 1st to December 30th. The legacy for each four-month period is distributed among those canons who have been present in the choir throughout the entire four-month period, without any noted absences. Whoever is absent even once, or enters the choir after the divine services have begun, or leaves before they are completed, for any reason whatsoever, loses the right to the legacy for that four-month period

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in which he was absent; even the infirm or those impeded in some way are excluded from these legacies which are to be distributed.

[*Latin ed. p. 299*]

A certain number of clerics, amounting to 299, were among those who had not earned any merit points during the quarter. However, this rule was subject to a double exception, namely: that those, with the approval of the Ordinary, were engaged in spiritual exercises in a religious house, or who served the Bishop outside the cathedral church in liturgical functions, were to be considered present in the choir for the purpose of receiving the distributions of the legacy. At the end of the year 1889, the current Bishop, observing that it would be very difficult for most of the canons to benefit from the D'Auria legacy, requested that, in derogation of the founder's will, those who had not incurred more than five penalties for absences during the four-month period be admitted to receive these distributions. But, on the one hand, the supreme law of the deceased Prelate seemed to be intended to protect legal procedures, and on the other hand, legitimate reasons for derogation were not clearly demonstrated. Therefore, the request was rejected with the response: "It is not permissible."

However, a few months later, the Bishop again petitioned the Sacred Congregation of Clerics, initially limiting the offered requests, and asked that the fruits of the legacy be distributed to those canons who had not exceeded the fourth merit point during the entire quarter, while maintaining the rest of the pious testator's will.

In legal matters, it is established that the supreme dispositions of testators are to be considered as law and are to be religiously observed (*in iure*), so that they cannot be altered or annulled in any way without a necessary or evident reason. In the present case, it would be necessary to say that such reasons are lacking, either because the testator's will is recent and clear, or because the requested indulgence could potentially harm the Church and the choral service. Moreover, since the testator expressly stipulated only two exceptions, excluding even those due to infirmity, the presumption arises that he would be entirely opposed to any derogation from his stated will. It should also be noted that the rights of the diligent canons could be harmed.

[*Latin ed. p. 300*]

300 NUCERINA PAGANORUM, since to the participation of the legate, others less diligent are admitted. However, according to what the Bishop writes, it must be considered that, due to the distance from the Cathedral, the journey is arduous, especially in winter. It is truly harsh that canons who have been diligent throughout the entire quarter may lose all their rights for the sake of a single fault, thereby forfeiting the reward they have earned through constant attendance. When this arrangement was made,

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almost all the chapter members were young men and teachers in the seminary, adjacent to the Cathedral. Therefore, from this harshness, it becomes difficult even for the most diligent to avoid some point of fault. These reasons seem to have been approved by the chapter, as the vote signed by all the canons and appended to the Bishop's petition was transmitted to the Sacred Congregation of the Council. Thus, all danger of injury to rights seemed to be absent, and the reasons for which the Sacred Congregation sometimes derogates from the supreme laws of witnesses would not be present in this matter. With these things noted, the question arose as to what should be answered to the prayers. RESOLUTION. The Sacred Congregation, on August 29, 1891, decided to respond to the prayers with the following: Negative; and the arrangements of the Bishop should be observed. FIRMANA, CONCERNING DUTIES AND PENSIONS. On August 29, 1891, Session 24, Chapter 18, Concerning Reforms. COMPENDIUM OF THE MATTER. In the month of December 1889, to the parish and abbatial Church of the Saints Rufinus and Vitalis, located in Amandola, in the Diocese of Fermo, the priest Dominic Artesi was granted a grant from the Apostolic Dataria. However, since the income of the parish was reported to be quite substantial, and it was also stated that three other parish priests in the same town were in a miserable condition, ver-

[*Latin ed. p. 301*]

In Fermo, on the 30th of [month unspecified], during the collation of offices, certain charges were imposed upon the newly appointed abbot. Thus it came to pass that the parochial benefice of the Saints Rufinus and Vitalis, which was already burdened with an annual pension of 798 florins payable to the prelate Terentius Carletti, and with three other pensions, namely 800 florins in favor of the parish priest of Saint Donatus, and 250 florins for each of the parish priests of Saint Mary of the Meta and Saint Peter in Castagna, became even more heavily burdened. Meanwhile, when the priest Artesi prepared to undertake the duties of the parish entrusted to him, and in order to be able to enjoy the revenues of the benefice, he was compelled to present Apostolic Bulls to a pseudo-authority of the civil order in order to obtain the royal approval. The municipality of the place, Amandola, contested this, claiming that its rights of patronage extended to the parochial abbey, and therefore that the provision made was to be considered null and void. Consequently, it happened that the Apostolic letters were unable to achieve their effect until the secular power had become fully aware of the entire matter; which finally occurred ten months after the collation was completed. The highest council of the state issued a favorable response to the priest Artesi, and judged the arguments presented by the municipality to be without merit. However, in order to obtain this, or to resolve the matter more quickly, it was necessary to incur greater expenses, which, according to the current abbot, amounted to 1500 florins. After these events,

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the priest Artesi obtained possession of the benefice. However, since the vacancy had lasted for 23 years, and during that time the temporal administration of the benefice had been managed by a sub-economus, as they say, who was in charge of the administration of vacant benefices, it had come to pass that the properties of the abbey, which constituted its endowment, had suffered a diminution in fertility, and were deteriorating daily. Furthermore, the three churches, whose care is entrusted to the parish priest, were not only lacking in everything necessary for the sacred services; but one of them is on the verge of complete ruin, while the others are in dire need of complete restoration, so that the squalor and damage may be removed from the house of God. Therefore, in addition to the expenses incurred for the recovery of the benefice and other...

[*Latin ed. p. 302*]

302 In Fermo, più persone avrebbero dovuto morire, in modo che, per le tasse di successione, per la redazione dell'inventario e per altre necessità relative al possesso, siano stati spesi circa 4000 scudi, e poiché i restanti ricavi del beneficio non erano sufficienti a coprire tutti i costi, presentò una petizione al Sommo Pontefice, chiedendo che i pensionati presenti si unissero, secondo le disposizioni stabilite dall'Ordinario, per sostenere le spese indicate e per ridurre il beneficio allo stato voluto dai santi canoni. Allo stesso tempo, chiese che la pensione concessa al R. P. D. Oarletti, se disponibile nel periodo in cui il beneficio è in possesso del rettore, fosse versata fino a quando le spese non fossero state coperte. In merito a questa questione, l'Arcivescovo fu interrogato e rispose: i pensionati non devono esitare a pagare per le spese straordinarie già sostenute per la rivendicazione del beneficio contro le pretese del comune. Tuttavia, poiché la risposta dei tre parroci non era stata completamente chiara al sacerdote Artesi, si è adoperato affinché l'intera questione fosse esaminata dalla S. C. Pertanto, è stata omessa la parte dei documenti in cui si parla delle spese sostenute per la rivendicazione del beneficio contro le usurpazioni dei comuni, per le quali i pensionati si sono impegnati a pagare, e sembra che si debba prendere in considerazione il resto delle richieste. Innanzitutto, è importante notare che il parroco Artesi ha presentato lo stato attivo e passivo del suo beneficio, che il cancelliere arcivescovile, dopo aver esaminato i documenti, ha attestato essere corretto. Da questo si evince che i ricavi del beneficio ammontano a circa 7257,29 scudi all'anno, dai quali, se si sottraggono le spese ordinarie pari a 5645,90 scudi, rimangono a malapena 1611,39 scudi. Inoltre, si fa notare che non sono state considerate nelle spese annuali né le somme che si devono pagare per le case affittate, a causa della mancanza di una casa parrocchiale, né i ricavi derivanti da beni altrui, a causa delle spese sostenute per la rivendicazione e il possesso. In base a quanto sopra, si osserva inoltre che i ricavi del beneficio, se i terreni non vengono riportati a una migliore coltivazione, subiranno un'ulteriore diminuzione ogni anno, e si cerca di

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dimostrarlo, riportando che i contratti di locazione, dall'anno 1883 ad oggi, hanno comportato una riduzione di 500 scudi all'anno. Successivamente, si aggiungono le seguenti osservazioni sulle spese straordinarie: è un onere del titolare di questo beneficio avere due cappellani.

[*Latin ed. p. 303*]

FIRMO, 303, of whom one is for the city, and the other for the external part of the city; secondly, besides a sufficient stipend, a decent dwelling place is required; the present dwelling place is so inadequate that the chaplain is forced to live outside the parish; furthermore, three churches of this Abbey entirely lack sacred vestments, and are in need of urgent repairs, while one of them is completely collapsing; nor are the smaller expenses of the coloner's house less. From this, it can be gathered that the income of the benefice would have been sufficient for many years to cover these needs, and that the beneficiary would be found in a worse condition than his pensioners.

A SYNOPTIC DISCUSSION: DEFENSE OF THE PAROCHIAL PRIEST.

It has been noted among Doctors, when the question arises whether the beneficiary is obliged to contribute to the expenses of the benefice, that a distinction is usually made as to whether the pension is reserved in a fixed sum, or in a fixed proportion. However, many, among whom Tondutus in *De Pensionibus*, cap. VI, no. 2 and following, seem to reject this distinction, and rather embrace the opinion that it is a general rule that the beneficiary is obliged to contribute in proportion to the solution of the burdens imposed on the fruits of the benefice. And the reason is given, because the beneficiary is similar to a tenant farmer who is obliged to pay tithes from his share of the produce of the land, as stated in *De Decimis*; and like a usufructuary, who is obliged to pay the collections and burdens imposed on the fruits, such as annual collections, taxes, pensions, canons, tributes, and other similar temporary payments, as Castilian states in *De Usufructu*, cap. 57, no. 14; and as Molina states in *De Primog.*, lib. 1, cap. 27, no. 8, with the authors cited there; to which should be added Osase, decisions 83, in full. Therefore, Pyrrus Corradus in *Praxi Benefic.*, lib. 5, cap. 7, no. 9, considers the pension as a real burden on the benefice, and Pitonius in *Discit. Ecclesiast.*, 56, no. 47, states: "When the contribution concerns the fruits of the benefices, there is no difference in reason for the purpose of paying the contribution between the titular and the beneficiary, since they are said to be partners in the fruits, and therefore both are obliged."

[*Latin ed. p. 304*]

304 In Fermo, concerning the contribution for expenses: It can be rightly concluded, as Ferraris states in *Pensio*, number 133: "Generally, a pensioner is obligated to contribute in proportion to his pension to all the

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expenses of the benefice, unless the Pope has added that the pension is entirely free, immune, and exempt." However, concerning the expenses incurred by the priest Artesi in the parish property, it should be noted that the entire, as they call it, inheritance tax for all the revenues of the abbey was paid in the records 1319, 50. Furthermore, the other expenses are to be considered as if the fruits were fully received. For, so that hope of a reduction in pensions does not vanish, it is remembered that the beneficiary must pay the taxes of *mains mortes* and of *concorso* for the pensioners; for the government does not admit the expenses of the pensions, and fully burdens the titular. For the payment of the aforementioned taxes, the amounts 395, 92 must be spent annually. Furthermore, concerning the restoration of three churches and other necessities for the parish and worship, it is not unreasonable to cite what the Council of Trent established in Session 21, chapter 7, on Reform: "Parish churches, even if they are under patronage, should be restored and maintained in such a way that the Bishop, from the fruits and revenues in any way pertaining to those same churches, should provide for them. If these are not sufficient, all patrons and others who receive any fruits from said churches should be compelled, etc." The Doctors commonly hold that those who benefit from the revenues have the duty of the restoration and maintenance of the church. And specifically, Ferraris, number 129, states: "The pensioner, from the revenues of the pension imposed on the benefice, is obligated to contribute in proportion to the repair of the church, just as the titular or beneficiary himself is obligated." If such expenses were to be paid only to one parish priest, those who are already burdened with foreign money would almost certainly lack the means necessary for their honest sustenance. Furthermore, it is in accordance with canonical equity that the just portion of revenues for the living expenses of the beneficiaries should not be diminished because of pensions added to the benefice.

[*Latin ed. p. 305*]

FIRMANA, 305, according to the custom of the place and its inhabitants. Fagnanus, in chapter *Nisi de praeb.*, number 27, and the Sacred Congregation of the Council, in *Caesenaten. Pensionis*, February 26, 1825, state this, or something similar. This is even more so when the matter concerns a parish priest, to whom the decree of Pope Benedict XIII, *Quanta pastoribus*, might perhaps be of some benefit. The Pope wished to commend, as much as possible, that pensions should not be imposed upon parishes by the authority of the Apostolic See, so that individual parish priests might be able to contribute the surplus fruits to the poor of their parishes. Furthermore, pensions granted to parish priests should always be considered with the understanding that a suitable amount remains, as Barbosa states in *Collect*, number 13. Corradus, in *Praxis Benef.*, book 5, chapter 1, number 27, etc. However, this understanding, according to the

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parish priest of Artesi, would not hold if he himself were burdened with all expenses. Finally, the particular circumstances relating to the granting of pensions to three parish priests must be considered. Firstly, in the reservation of the pensions, it is stated that the income of the benefice amounted to 7725 florins, while, as mentioned above, it barely reaches 7257.29 florins. Secondly, it is affirmed that only three parishes are in a better condition; for the miserable assignment of 250 florins had increased to 700 florins, resulting in a suitable amount, by which, in the following year, they would receive 8000 florins, without any tax. Finally, reasons for granting grace for the suspension of the old pension are requested, favoring the prelate Carletti, both due to the poverty of the parish priest and the needs of the church.

DEFENSE OF THE PENSIONS. However, more is presented to the parish priest of Artesi. Firstly, it must be noted that there is reason to doubt the veracity of the active and passive accounts presented by the parish priest himself, since they do not appear to have been drawn up by experts, but only approved by the chancellor, whom, it is generally understood, is not a competent judge in such matters. Furthermore, the words used by him in the approval are considered, taking into account the reasons that are usually given according to the law or custom. These are matters that allow for freedom of estimation. *Aetia, Tom. XXIV, fase. COLXXXI, 20*.

[*Latin ed. p. 306*]

306 In Fermo, and it appears that a certain rule is being disregarded. It suffices to note that among the ordinary expenses, an item was recorded for a canon of 200 livres payable to a certain Treggiari for a period of ten years, of whose cessation no mention is made, and which, as a temporary burden, should not have been noted here at all. But setting aside these matters, and those which perhaps could be excused as necessary expenses, it must be remembered that the laws by which pensions are granted by the Roman Curia require that they be paid fully and freely from any burden, as was also discussed before the Sacred Congregation of Bishops and Regulars on April 11, 1807, in the case of Hortana, and also several times in the Sacred Congregation of Bishops and Regulars, and especially in Rome on September 20, 1878. (1) However, the exception from this last-mentioned decree, *Cum nuperrimis*, could not be invoked here, since it concerns pensions imposed in the year 1889, and the other conditions required there appear to be lacking. Therefore, it would be permissible to conclude that the three parish priests are entitled to receive their pensions without any reduction. Regarding this, see Ventriglia, vol. II, Annotations, XI, § 11: "Note first that in the reservations of pensions, a clause is often added to the benefit of the pensioner, which is: 'free, immune, exempt,' and with this clause in place, the pensioner is not subject to the burdens that are usually imposed on

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the fruits of the benefice." But even if the clauses that are usually added were lacking (which is not stated in the records), it would not necessarily follow that the requests of the priest Artesi should be granted. For there are canonists who assert that a pensioner is never subject to the burdens of the benefice, because, as taught by Santi, *Praelect.*, title *Ut eccl. benef. sine dim. conferantur*, n. 25, when a pension is granted, the Superior is aware of the rights of the benefice, and the deduction of the pension from the fruits of the benefice is made in such a way that, considering even probable future events, a suitable and sufficient portion remains for the beneficiary. Indeed, even those who maintain the opposite opinion acknowledge that the contribution of the pensioner is very... (1) The decree *Cum nuperrimis* referred to is found in Vol. VII, 325. The pension mentioned here is referred to in Vol. X, l, 394. The question of...

[*Latin ed. p. 307*]

FIRMANA, dated 307, stipulates that, as noted in Tondutum, op. cit., "From this, Rebuffus, in canon 125, derives the general rule that a pensioner is obligated to bear the burdens of the pension when the burden pertains to the Church; otherwise, if it pertains to individuals, which he says should be noted. Therefore, the pensioner is not obligated to contribute to the expenses for the restoration of the abbey, nor to repairs, unless in extraordinary circumstances, etc." Consequently, if three parish priests in the diocese have declared themselves willing to contribute to the expenses incurred by the rector of the benefice in order to defend the rights of the abbey against the municipality, it must be said that they have acknowledged their debt, and should not be compelled to bear other personal burdens. They, however, ineptly invoke a future diminution of revenues; for "since the lord of the benefice is the owner of the revenues, the loss must be borne by him, not by the pensioner; just as, conversely, the increase must benefit him, without the pensioner being entitled to any share of it, since the increase and decrease belong to the lord." De Luca, *De Pensionibus*, section 91, number 4. Nor does the parish priest of Artesi seem to have fared better in his appeal. For, according to his own confession, even after all expenses are paid, the sum of 1611,39 remains, which is almost three times the amount assigned to parish priests by the Council of Trent, and which, even today, is likely sufficient for a modest livelihood in a small town. Furthermore, the matter of uncertain revenues was not adequately addressed here; although others may hold a different opinion, the Sacred Rota Auditorium in Vicenza, in *Congruae* of January 23, 1754, before Bussio, and in Asculana, concerning the restoration of the church and the parish house, on June 22, 1789, before Paracciano, declared: "Nor should any deduction be made from the revenues, which are called 'stoles.' For these, too, must be included in the calculation of the congrua; there is no doubt about this." Finally, it must be said that the miserable condition of

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the three parish priests is evident, and that the granting of the pension was confirmed by the Archbishop and the Supreme Prince.

[*Latin ed. p. 308*]

308 Fermo. If, indeed, some small sum is offered to them for the administration, or promised for the future, it concerns a trifling amount of money, which is mostly absorbed by the numerous burdens imposed. Furthermore, there is very uncertain talk about a return, which often depends on the arbitrary decision of some official of the treasury, and while something may be granted on one hand, it can be taken away on the other. Finally, with regard to the suspension of the pension which Father Carletti currently enjoys, it could be observed that the granting of this favor pertains to the Apostolic Datary, and therefore the matter should be referred to that office. Having considered these points on both sides, the intention was to resolve the doubt as to whether and how the petition of the petitioner should be approved in this case. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on August 29, 1891, decided to respond as follows: Regarding expenses for defending the liberty of the Church from a former patron, an affirmative response is given, in proportion to the pensions; regarding expenses for the repair of churches, the Archbishop should provide, as is his right; regarding the pension granted by the favor of the prelate to Father Carletti, recourse should be made to the Apostolic Datary; regarding the rest, a negative response is given in all respects. FROM WHICH THESE POINTS ARE DERIVED. I. Pensions are to be paid in full, unless expressly the contrary is imposed by the Apostolic See. II. A pension is usually granted after the Superior has become aware of the resources of the benefice; so that, considering also future probable events, a suitable and sufficient portion remains to the beneficiary. III. The beneficiary is the owner of the fruits of the benefice, therefore, whatever is increased or diminished proceeds from his favor or detriment, so that the pensioner feels either loss or gain.

[*Latin ed. p. 309*]

309 GENOA. OF PAROCHIAL RIGHTS. On September 12, 1891. Session 24, chapter 13, Concerning Reforms. SUMMARY OF THE CASE. It is well known that among the Christian people, it is a commendable practice for newly constructed ships, before being launched into the sea, to receive blessings and sacred rites. Among the places where such rites are frequently performed, the maritime coast inhabited by the Ligurians must certainly be included. Therefore, it happened that in Genoa, within the limits of the parish of the Blessed Virgin Mary, assumed into Heaven, in the town of Sestri, located to the west of the diocese of Genoa, on August 23, 1889, a cargo ship of considerable size was to be launched for the first time, and two brothers of the Order of the Minor Capuchins from the

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monastery of Campo were called by the owner of the ship to bless it. After these brothers had solemnly bestowed the blessing upon the ship, the local parish priest, unaware of their actions, was immediately indignant at their conduct, and after a few months, he presented a petition to the Sacred Congregation, requesting that the aforementioned Fathers be ordered to abstain from performing such rites, and that this blessing ceremony be declared the exclusive prerogative of the parish priest. The Ordinary, after being questioned, reported that the facts presented by the parish priest were true; namely, that the Capuchin Fathers, without the permission of the parish priest or the local superior, had performed the solemn blessing of the ship; whereas the practice of the entire Ligurian maritime coast is quite the opposite. SYNOPTIC DISCUSSION. PAROCHIAL RIGHTS. He who undertakes to defend the rights of the parish priest, having considered the definition of the parish, according to which the pastor enjoys power and precedence over all others within his territory, *Ferraris, verb. parochia, n. 4; Barbosa, De Off. et pot.*

[*Latin ed. p. 310*]

310. IANUEN, in his *Parochus*, page 1, chapter 9, number 3 and following, noted that these blessings are reserved especially to the parish priest. He also mentions that, according to the teaching of Cardinal Cajetan in *D. Thomam*, 2-2, question 88, article 11, among the invocative blessings, are to be included the blessings of houses, ships, foodstuffs, and other things that are used for profane purposes. See *Clericatus Decisum* 42, number 59; Passerinus, *Disputationes*, 9, chapter 38, number 9; Laymann, *Liber*, 5, treatise 9, chapter 13. However, he argues that these invocative blessings, if performed publicly and with solemnity, belong exclusively to the parish priest by reason of jurisdiction, which he alone enjoys within his own territory, and which is often likened to that of a bishop. See Ferraris, *V. iurisdictio*, number 2, 3; Mascardi, *De prob*, volume 1, conclusion 217, number 2. Therefore, the advocate argues, just as no bishop, under the pretext of any privilege, can exercise pontifical functions without the express permission of the local Ordinary, so no priest can perform solemn and public sacred functions without the consent of the parish priest. Regarding the blessings mentioned in the topic, there is no doubt that they are to be considered among the public and solemn sacred functions. Indeed, they are usually performed with established rites and prayers, with the chanting of these prayers and the formula of blessing, by a priest wearing sacred vestments, and in the presence of a large number of the faithful. Therefore, the advocate argues, just as "it pertains to the parish priests to make processions through the parish, and no one, not even a regular, can direct them without their consent," as Barbosa, *De off. et pot. parochi*, book 1, number 12, chapter 13, states, "so too, it should be said that solemn blessings of ships are reserved to the parish priests for the same reason." As

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for the regulars, and in this case, the Capuchin Fathers, it has been noted that solemn and public blessings performed by a priest wearing a stole are forbidden to them, because, as *Clericatus Decisum* 42, number 76, and Pignatellus, volume 5, consultation 77, state, speaking of the blessing of a woman after childbirth, "the stole is a sign of jurisdiction, which the regulars cannot exercise, since they do not have it." It is considered that several decisions of the Holy Congregations are based on this lack of jurisdiction, which prevents the regulars from...

[*Latin ed. p. 311*]

January 31st, in their churches, unless with the permission of the Ordinary and for a reason approved by the same, to solemnly expose the Most Holy Sacrament of the Eucharist and to bless with the people. Sacred Congregation of Bishops and Regulars, December 10, 1602; Sacred Congregation of the Council in Naples, August 17, 1630; Sacred Congregation of Rites in Fermo, January 22, 1701. These are furthermore confirmed by another resolution of the Sacred Congregation of the Council, cited by Ferraris, Volume V, number 20. Indeed, when the Procurator General of the Capuchins petitioned, asking: "1. Whether the religious of this order can, without the permission of the parish priest, bless fields, curse locusts, and other such vermin; and 2. Whether they can use the *stola* in performing such functions without the permission of the parish priest," the response, given on August 28, 1688, was negative to both questions. Therefore, if the blessing of fields by religious, and specifically by the PP. Capuchins, cannot be performed without the permission of the parish priest, it follows with even greater force that the solemn blessing of ships cannot belong to them in any way. For, "religious cannot carry the *pluviale* or *stola* outside their own church," as taught by Canestri in his jurisprudence concerning parish priests, title 3, chapter 4. Furthermore, it is observed that many functions, which are not strictly and by right parochial, cannot be performed by any priest, and in any circumstances. Indeed, among the functions which are not strictly parochial, there are many which pertain to the parish priest, so that they cannot be performed without his permission, or that of the Ordinary. This is taught commonly by canonists, among whom Berardi is well known: "Just as the Church, following the example of the sacraments instituted by Christ, has instituted certain rites, so it has happened that these rites are more closely associated with the office of the parish priests, especially those that are closely related to the sacraments, and are reserved to the ministry of the parish priests." Commentary on Disputations, 6, chapter 2. This doctrine is confirmed by the decrees of the Sacred Congregations, especially that of the Sacred Congregation of Rites, of January 10, 1704, concerning question 22. Therefore, John Berengo

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concludes, in his *Enchiridion Parochorum*, article 6, § 185, that "no..."

[*Latin ed. p. 312*]

312 IANUEN. Actus publici cultus possunt fieri publice per vias intra limites parochiae, nisi a parocho aut de eius consensu. Praeterea, alium argumentum praesto esse parocho censet, ex consuetudine ibi vigenti deductum, vi cuius dominus *novae* navis solet oblationes aliquas parocho et ecclesiae paroeciali largiri. Praeterquam quod enim relate ad has oblationes, parochi fundatam habent intentionem in iure ex cap. Pastoralis 28 et ex cap. Quoniam 13 de dec. prim. et oblat.* animadvertit in themate hisce oblationibus maior pars congruae Archipresbyteri loci Sestri constitui, quaeque proinde a fisco taxa vulgo *di ricchezza mobile* gravatae fuerunt. Nec satis: putat enim orator ex ipsa rubrica benedictionum deduci huiusmodi solemnes navium benedictiones ad parochos privative competere. Allata enim auctoritate Gavanti tom. 2* p. 4* tit. 15* nec non Pignatelli tom. 5* constit. 76* n. 11; qui apud Clericatum docet: quod benedictiones notatae in Missali sunt communes cuicumque sacerdoti, etiam regularibus in suis ecclesiis: illae vero quae ponuntur in Rituali *Romano* censentur reservatae curatis animarum. Igitur cum in Rituali *Romano* notata inveniatur navium et cymbarum benedictio, concludendum est illam ad parochum exclusive pertinere. At quod omne dubium, si quod remaneret, auferret, est immemorabilis loci consuetudo omnino parocho favens, qua usque ab anno 1600 constat, parochum semper *novas* naves benedixisse. Id ex pluribus, quae allegat, documentis abunde evinci adnotat patronus, et nominatim ex epistola antecessoris archipresbyteri loci Sestri Ponente, in qua parochus de agendi ratione Capuccinorum conqueritur, nec non ex attestationibus plurium finitimarum paroeciarum rectorum. Quibus si ea addantur quae superius in facti specie relata sunt ex Archiepiscopi voto excerpta, consuetudo testibus omni exceptione maioribus demonstrata videtur. Iamvero neminem fugit observantiam attendendam esse ex L. Minime ff. De leg. et cap. cum dilectus de consuetudine; quippe quae om-

[*Latin ed. p. 313*]

GENOA, 313. The ambiguous point is clarified from the chapter, since they have come from the council, and it has the force of law from the Code of Canon Law, book 1, title 2, on ecclesiastical goods, and from the decrees on benefits and honors, chapter 9 on customs, and from the decision of the Sacred Roman Rota, Monte F, concerning canonical institutions, of May 5, 1823. Indeed, especially if it concerns that which is of such importance, that whether it is alleged in a presumptive manner or in a prescriptive manner, it presents a title to a better world, as taught by Cardinal De Luca, discourse 32, numbers 2 and 4. The Rota, etc. After these things, the patron has the right to overturn the contrary reasons, and notes in the first place

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that several of the authorities cited do not apply when it is a question of only private blessings. He also points out that it is not in accordance with the truth, according to Benedict XIV, that public and solemn blessings should apply to any priest. Indeed, that Supreme Pontiff, in notification 105, states that the sacred functions are to be performed without prejudice to parochial rights, and cites decrees of the Holy Congregation of Rites, in which it is stated that certain functions, which are not purely parochial, are nevertheless to be performed by the parish priest. Furthermore, he does not consider it appropriate to cite the responses of the same Holy Congregation from the year 1671, quoted by Gardellino, since they are considered to have lost their authority after more recent and general decrees. He says the same about the other decisions of the Holy Congregations of Bishops and Regulars and of the Holy Rites, and also about the authority of Monacelli, in which either the license of the Ordinary is required, which is lacking here, or, as stated above, it concerns only a private blessing. He believes that the custom of the Capuchins should be opposed, except for what he has already mentioned, and he derives this from the diocesan synod of Genoa in the year 1603, in which Archbishop Horatius Spinola decreed: "When houses, ships, and hulls are to be blessed, the parish priest shall perform the rite, or another to whom the parish priest has delegated it; whoever presumes to do otherwise shall be subject to the penalty of suspension." He considers that the assertions of the Capuchins regarding custom should not be given credence, either because they were issued in their own cause, or because they are based on the testimony of three senior priests of the place, whose testimony is favorable to him.

[*Latin ed. p. 314*]

314. IANUEN, a priest of Magnaschino, who had served as pastor there for thirty years, and the canon Prefumo, both affirm this, and the priest Patuzzi declared that he had not issued any testimony in favor of the Capuchins.

RIGHTS OF THE CAPUCHINS. On the other hand, the general procurator of the Order of the Capuchins presented a handwritten allegation in which he vigorously maintained that the solemn blessing of ships is not a prerogative of the parish, and therefore can be performed by any priest without the knowledge of the parish priest. Furthermore, he notes that among the authors who enumerate parochial rights, no mention is found of the asserted right by the archpriest. On the contrary, he believes that the opposite is entirely evident from Doctors of great renown, among whom he mentions Benedict XIV in *Institutiones Ecclesiasticae*, Vol. V, § 4 and following. He also asserts that Scavini, in *Theologia Moralis*, Vol. 3, page 188, published in Milan in 1862, citing also the authority of Catalani and Quarti, teaches that the blessing of ships is not among those reserved to the parish priests. He affirms that this is fully consistent with the *Rotarium

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Theologiae Moralis Regularium* (1722), Vol. III, On Blessings, page 491, n. 14. He believes that this doctrine is also confirmed by the decisions of the Sacred Congregations, citing a resolution of the Sacred Congregation of Rites on the 13th of June, 1671, which he quotes as follows: "The function of blessing ships is not parochial, and therefore it is permissible for the canons of S. Michael Maior to bless them within the limits, wearing the cope, stole, and with a minister, a vessel of holy water, and according to the ritual, without the permission of the prelate, to whom the care of the chapter has been assigned." (Gardellini, Vol. II, page 283, published in Rome, 1825. Muhlbauer, Vol. 1, under the heading "Benedictio," n. 38.) He notes, however, that there is no argument to support the assertion that the functions performed by the parish priest, such as blessing ships, are parochial, since the stole cannot be absolutely taken as a sign of jurisdiction, and therefore its use cannot in any way prohibit the Capuchins from performing these functions. And with particular reference to the Capuchin brothers, he cites a letter from the Sacred Congregation of Rites dated September 15, 1788, addressed to the Bishop of Viterbo, in which the same Ordinary is ordered to moderate the prohibition, and to permit the Fathers [Capuchins] to...

[*Latin ed. p. 315*]

IANUEN. 315 The Capuchins, in order to be able to bless the sick, animals, fields, wine, vegetables, and similar things with holy water, may do so, provided they do so at the request of some person, not by virtue of their office, privately and without solemnity, except for these same Fathers on the Holy Sabbath, on which day they must entirely abstain from such blessings. He also adds another letter, almost similar, from the Holy Office of Bishops and Regular Canons, which was sent to the Apostolic Nuncio in Venice on November 28, 1661, which he found in Bizzarri, page 292, where, as he himself states, it is explicitly stated that "The Minor Capuchins can bless animals and property." Furthermore, the general procurator of the Capuchins does not believe that it is contrary to another response from the Sacred Congregation, according to which the Minor Capuchins could not, without the permission of the parish priest, bless fields, nor curse locusts and grasshoppers. However, the author notes that Marcellinus De Luccia, in his work *De iure Capuc.*, insists on the authority of the aforementioned response: "This response, because of the general formula of the petition presented to the Sacred Congregation, and necessarily negative in the abstract, should not be considered to invalidate the aforementioned responses, nor in any way diminish the rights and privileges of the Minor Capuchins, which have been recognized by the Apostolic See without anyone objecting to date." Turning more closely to the point of the question, he argues that the right to bless ships belongs to the Capuchins, according to what is stated by the same De Luccia, op. cit., page 396. And therefore, he cites a letter from the Sacred Congregation of Bishops and Regular Canons, dated

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August 31, 1629, in which the following is read: "Since the Holy Congregation has been informed by the Provincial of the Capuchin Province of Venice that some parish priests are trying to cause trouble for the Fathers, by forbidding them to assist the dying in commending their souls, and by forbidding them to privately and without solemnity bless the properties and ships of some of their devoted parishioners, who request it: the Most Reverend Fathers Judges ordered that it be written that the Capuchin Fathers are doing nothing in these actions that is proper solely to the office of the parish priests, and therefore the Fathers should not be troubled in these matters."

[*Latin ed. p. 316*]

316. IANUEN. He affirms that another decree of the Sacred Congregation of Rites, issued on October 5, 1686, is in agreement with this, and quotes it in these words: "It was presented by the General Procurator of the Order of the Minor Capuchins, that in various dioceses, it sometimes happens that their priests are called by benefactors to give private blessings, according to the Roman Ritual, upon their fields, animals, new ships, and similar things. But because some pastors claim that this is not permitted to them, the aforementioned General Procurator made a suitable petition to the Sacred Roman Congregation; and the same Sacred Congregation judged that it is permissible with the license of the Ordinary." It cannot be said that such responses have lost their force in individual cases published, given the general decree of the Most Holy Congregation on January 10, 1704. For, besides the fact that nothing contrary is explicitly stated therein, since we are dealing here especially with the privileges of Religious, the most common principle of jurisprudence is applied, which states that: "Later laws are to be understood and applied with the limitations and exceptions of earlier laws." (LL. 26. 27* 28 ff. de legibus). "Furthermore," adds the same Procurator, "as Monacelli, in his *Formularium Legale Practicum*, edition 3, Rome, page 14 and following, states, although he does not speak expressly of the blessing of ships, he asserts that several blessings are reserved to the parish priest, either by law or by some agreement (in the cited passage concerning the decree of Sestri Ponente), and he invokes the authority of Pignatelli on this matter. However, if one examines the matter more closely, it is understood that Monacelli there speaks of solemn blessings; not, as in this case, of a simple blessing given outside any church without any solemnity. Indeed, Monacelli (ibid. n. 63) rightly suggests that there can be blessings that are not reserved to the parish priest, in accordance with the tenor of several decrees: - If any decrees contrary to this were found, they are not to be given much weight: because either they speak of blessings not solemn, outside the days of Ash Wednesday, Palm Sunday, and the Purification of the Blessed Virgin, and are to be understood in that sense, or they are issued without the hearing

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or defense of the pastors, without examination of the matter, and with adverse consequences."

[*Latin ed. p. 317*]

317. Concerning the aforementioned circumstances, it must be conceded that they were either not the case, or at least that they "arose from some circumstance of the event unknown to us." Furthermore, since the thesis clearly establishes the conditions under which Monacellius explicitly declares that the blessing is not exclusively parochial, the matter appears to be settled. Regarding the solemnity, he states only this: "The lesser Capuchins, when invited by the owners of new ships, impart the blessing without pomp, and in the manner practiced in Venice; and this would not be denied to them in this case, without causing scandal to the faithful, and indeed, with some zeal against the very parish priest." After these remarks, discussing a custom that prevails in the parish of Sestri, in the eastern and neighboring areas, he observes that the parish priest invokes it inappropriately. From the fact that the archpriest is more often than others invited by the ship owners to impart the blessing, he argues that no argument can be drawn. For this concerns acts that are subject to the will of the faculty, in which prescription does not apply, as Engel states in title *De Praescriptionibus*, § 2, n. 9. Moreover, he affirms that the practice prevailing there is not contrary to that of his brethren. To prove this, he presents a letter from the superior of the Ligurian province of the Capuchins, which contains numerous testimonies of the Capuchin Fathers, from which the custom asserted by the parish priest appears to be excluded. Finally, referring to the synodal prescription of Archbishop Spinola in the year 1603, he observes that it lacks force, either because it fell into disuse, since those who contradicted it did not seem to suffer the threatened penalty of suspension, or because it could be said to exceed its limits, as it goes beyond the limits of episcopal power. Having considered both of these points, the purpose was to resolve the question: Whether the parish priest of Sestri in the East has the right to privately impart the solemn blessing in this case. RESOLUTION. The Holy Congregation, having knowledge of the matter, on September 12, 1891, decided to respond: Affirmative.

[*Latin ed. p. 318*]

318. REGARDING FUNCTIONS. From these, the following may be gathered: I. Parish priests, within their parish, just as bishops within their own diocese, possess by law and by their very nature, authority and precedence over all others. II. And therefore, just as no bishop, under the pretext of any privilege, can exercise pontifical functions in another diocese without the express permission of the local ordinary, so no priest can perform solemn and public functions without the permission of the parish priest. III. It should not be doubted that those blessings which are performed

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with established rites and prayers, accompanied by the chanting of those prayers by a priest wearing sacred vestments, and with a large gathering of the faithful, are to be considered among the public and solemn functions. IV. Solemn blessings of ships are to be reserved for parish priests, just as processions are reserved for them within the limits of their parishes; and these cannot in any way be performed without their consent. FROM THE SACRED CONGREGATION OF RITES: A QUESTION REGARDING THE PROPER OF THE MOST SACRED HEART OF JESUS IN RELATION TO THE FEASTS OF ST. JOHN THE BAPTIST AND THE HOLY APOSTLES PETER AND PAUL. A question having been submitted to the Sacred Congregation of Rites, the following declaration was requested: "When the feast of the Most Sacred Heart of Jesus coincides with the feast of the Nativity of St. John the Baptist, or with the solemnity of the Holy Apostles Peter and Paul, how should the First and Second Vespers be arranged?" The Most Reverend Fathers, entrusted with the preservation of the rites, having assembled in a regular meeting at the Vatican on the date indicated, and after mature deliberation, at the request of my undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, responded as follows: "Let the Decree of Urbis et Orbis be observed: 'Altero nane elabente saeculo.'"

[*Latin ed. p. 319*]

FROM THE SACRED CONGREGATION OF RITES, June 28, 1889, concerning matters both occurring and concurring. And thus they responded and ordered to be observed on September 5, 1891.

C. CARD. ALOISI-MASELLA, S.R.C., Prefect.

L. & S. VINCENTIUS Nussi, S.R.C., Secretary.

The Most Reverend Lord Felix Gialdini, Bishop of Montepulciano, humbly proposed the following questions to the Sacred Congregation of Rites for appropriate resolution, namely:

Question I. Does the custom exist in the diocese of Montepulciano of entirely omitting the absolution and other prayers prescribed by the Ritual after the solemn Mass on the day of a funeral, when on the preceding evening, such absolution and prayers were recited over the deceased's body in association? Can this custom be tolerated?

Question II. When the Most Holy Sacrament of the Eucharist is exposed for the souls suffering in Purgatory, can the Psalm *De profundis* be recited with the verse *Requiem aeternam*, and the *Oratio Fidelium* or another prayer for the dead, before the blessing; or rather, must the Psalm conclude with *Gloria Patri* and the *Oratio Omnipotens* be said for the living and the dead, due to the solemn worship owed to the same Venerable Sacrament?

Question III. When the Office of the day occurs in the Cathedral Church, and the Little Office of the Blessed Virgin Mary is added to all canonical

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hours, except for Matins: can the canons continue this custom?

Question IV. Whenever the Bishop enters the Cathedral Church for performing pontifical functions or for hearing a sermon, do the canons, according to the *Caeremoniale Episcoporum*, and notwithstanding any contrary custom, receive him at the church door, accompany him to the adoration of the Most Holy Sacrament, and again associate with him when he returns to his own place?

And the Sacred Congregation, after careful consideration of the opinion of another of the Masters of the Apostolic Ceremonies, decided to respond to the questions as follows:

To I. No.

[*Latin ed. p. 320*]

320 FROM THE SACRED RITUAL, Book II. Affirmative, if custom or a special grace is present, concerning the first part; negative concerning the second part. Concerning the third: Negative. The Little Office of the Blessed Virgin Mary is to be recited according to the rubrics, or it may be said at Matins and Vespers, preceding the Office of the day; in other hours, it is to be postponed to the Office of the day, and in Prime, after the words "Let us bless the Lord," it is said before the reading from the Martyrology. Concerning the fourth: Whenever the Bishop is about to celebrate Mass pontifically, even if he enters the Church through a private door, the Canons are bound to accompany him from the sacristy to the Church and back; on other days, it is sufficient that some of the dignitaries and Canons, wearing their cassocks, receive the Bishop at the door of the Church and escort him back. And thus it was written and declared on June 13, 1891. C. CARD. ALOISI MASELLA, Prefect. VINC. NUSSI, Secretary. OF THE CITY AND ITS DISTRICT. That the piety of the venerable City and its Christian inhabitants may increase towards the most pure Conception of the Virgin Mary, who have always diligently followed the blessed Virgin Mary with filial devotion, the City and its Clergy and people, readily complying with their wishes, the Most Reverend and Illustrious Lord Cardinal Lucidus Maria Parocchi, Bishop of Alba, and Vicar of the Holy Father Leo XIII in the City, supplicated the same Holy Father, so that, according to the Apostolic concession, the feast of the Apparition of the Blessed Virgin Mary Immaculate, commonly known as Lourdes, may be inscribed in the Calendar and in the Proper for the use of the Clergy of the City, on the eleventh day of February, under a double major feast, with its own Office and Mass, recently approved. Furthermore, His Holiness, at my suggestion as Cardinal Prefect of the Congregation of Sacred Rites, deigned to approve, with all benevolence, the prayers of the Most Reverend Orator, observing the rubrics, and notwithstanding any contrary regulations. On June 7, 1891. L. & S. CAI. CARD. ALOISI MASELLA, Prefect of the Sacred Rites. VINC.

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NUSSI, Secretary of the Sacred Rites.

[*Latin ed. p. 321*]

321 FROM THE CONSISTORY ACTS Concerning the consistory held on December 14, 1891. The Most Holy Father Leo XIII held a secret consistory in the Apostolic Palace at the Vatican, in which he pronounced the following ADDRESS: Venerable Brothers, It is not necessary for me to speak at length among you, so that you may understand the domestic conflict with the Church, which, although not always conducted with the same degree of violence, is nevertheless growing more serious each day. The events in Italy speak for themselves. Indeed, the persistent hostility of our enemies presses upon us, enemies who, confident in their cunning, attack us in various ways: some openly and with harshness, while others do so secretly and with apparent mildness. There is a certain class of people who do not even bother to conceal their animosity, but rather flaunt it: these are those who commonly proclaim that any outrage against the Roman Pontiff is permissible, as if against an enemy, and who daily seek out new causes for injury, and who fight as if in open battle. Let us not dwell on matters long past, but the events of last October are still fresh in our memory. For when a multitude, with such clear intentions, was about to express its sentiments, they determined to disrupt them in every way, and they did not hesitate to openly and immodestly reveal what they held in their hearts: they stirred up, without just cause, atrocious words and deeds against innocent people, people who were led by piety, not by civic concerns; and, as Rome itself testifies, they harassed the Pontiff, mingling insults with threats. Now, having gone even further, they seek to sway the entire population of Italy through writings and speeches, aided by popular support, so that the Vicar of Jesus Christ may be treated more harshly, and so that no more rights may be left to him than are granted to any private individual by law. And this is not the end of their wicked undertakings; for they openly declare that they intend to destroy the papacy itself, and for this purpose they will not hesitate, if the opportunity arises, to resort to violence. — Acts, Vol. XXIV, p. CCLXXXII.

[*Latin ed. p. 322*]

322 FROM THE CONSISTORY ACTS. Indeed, the opposing faction does not openly dare to express its sentiments; rather, they conceal their animosity towards the Church, or defend themselves with specious excuses. Moreover, they prefer moderation, employing cunning; for it has been observed that, if truth is sought, they demand the same things, and desire the same, as others. What, then, do those who vehemently and openly oppose the Christian name, even when they could restrain themselves by public authority, fail to restrain? Worse still, they inflame sedition and hatred among the people, when they dare to criticize the Pope, and threaten him with Italian affairs. And if they are unwilling to abolish certain laws, the

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purpose of which is to provide some assistance to the Holy See, it is because it is advantageous to their plans to refuse. For they understand that these laws are useful as an excuse abroad, and as a safeguard at home; and furthermore, they do not greatly hinder the interests of the Catholic cause. Indeed, we have seen many harmful things against the Church, and unjust things against the Pope, which nothing prevents them from doing, except the laws.

They claim, indeed, to fear papal authority; but they strive to limit this very authority, which has been divinely entrusted to the Pope, by the boundaries they themselves define, being the most obstinate of all in seeking to subject the Church to their own dominion, both in doctrine and in practice. In a similar manner, they proclaim that it is safe and proper for everyone to approach the Pope from any part of the world, for the sake of obedience; yet, in reality, such extraordinary license for insults is enough to deter foreigners.

Thus, the actions of these adversaries of both kinds impede our very ability to speak and be heard; and at every opportunity, as we have already said, we are daily subjected to indignities, and we are constantly struggling in the midst of great difficulties. And if these things are so numerous and so great in times of peace and tranquility, how much more will they be, if something unexpected should occur, especially if suspicions of war arise. And so it has come to pass that the hostile force of minds has increased in recent times? We, indeed, have consistently pursued the same course that our predecessor followed, and that which we ourselves, from the beginning of our pontificate, established out of a sense of duty. We have demanded the restoration of our rightful freedom, and we have sought to reclaim our rights in this city, rights which, by the providence of God and by the support of the world, are due to the Pope; and we are fully aware, as we have mentioned more than once, that the safety of these rights...

[*Latin ed. p. 323*]

From the Consistorial Acts 323: Our well-being, the freedom, and the prosperity of the Italian people can best be secured by this: indeed, complete agreement between the Italians and the Apostolic See will greatly benefit the growth of their goods, both at home and abroad. All that we have written, and everything up to this day, testifies that nothing in our opinion, nor in our method of acting, has been changed. Therefore, the cause of the increasing contention must be sought. But we seem to have touched upon the matter most truly in the letters which we addressed to the Italian people last year: in which we revealed the secret designs of the sects, using their own words, which were known to them: and these very words have recently echoed clearly in the assembly of the legislators. The common design of the sects is to exhaust the Supreme Pontificate with a fierce struggle, and, if possible, to utterly abolish the name of Christian.

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They are hurrying to carry out their plans, certain that everything will be favorable to them and that they will receive obedience. Indeed, not only do they not find any impediment, from which they might reasonably fear, but they see indulgence and encouragement for their undertakings. Therefore, Venerable Brothers, let us consider the state of affairs: and it is fitting that you know and remember this, because for those preparing to defend against force, it is helpful to have knowledge of the enemy's routes. And we greatly desire that those who govern kingdoms and empires pay attention to this, for they can easily understand that it is not only the interests of religion, but also the interests of the state itself, that are at stake, in preventing the progress of wickedness and bad morals. For where wickedness prevails, the very foundation of the state must necessarily collapse, which is held together by religion and the honesty of morals: and if the power of the Church, which has the greatest power to restrain, is undermined, all authority will be unstable and poorly protected. Let all Catholics, wherever they may be, understand what is being plotted against the Christian name, and let them, in particular, devise plans to thwart these designs against the Apostolic See: and let them, with united hearts, resist the audacity of these men, opposing it with the constancy of their faith, trusting in God, in whose goodness and power our hope rests most strongly. Now, before assigning Bishops to the vacant sees, it pleases us to announce that we have decided to honor two men from among you, whose virtues are not unknown to you: ALOISIUS RUFFO SCILLA, Archbishop titular of Petra, Prefect of our House; who was formerly Archbishop of Theatine.

[*Latin ed. p. 324*]

324 FROM THE CONSISTORY ACTS, in the Bavarian legation, he proved himself to the Apostolic See with integrity, counsel, and diligence in office: ALOISIUS SEPIACCI, of the Order of the Augustinian Fathers, titular Bishop of Callinique, Secretary of the sacred Council of Bishops and Religious Orders, commended for his sound doctrine and the faithful performance of various duties. What do you think? Therefore, by the authority of Almighty God, and of the holy Apostles Peter and Paul, and by Our own authority, We create and publicly proclaim the following Cardinals from the Order of the Presbyterate: ALOISIUS RUFFO SCILLA, ALOISIUS SEPIACCI, with the necessary and appropriate dispensations, derogations, and clauses. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen. Furthermore: having concluded this address, the Most Holy Father proposed the following titular archiepiscopal sees:

The archiepiscopal see of Pharsalia, vacant due to the death of the Most Reverend Aloysius Roteili, the last Archbishop of that see, who was created and declared a Cardinal Priest of the Holy Roman Church by His Holiness on the first of June of this year, and who passed away in the month of September in this city, before the pallium was delivered to him, and before

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a priestly title was assigned to him; by the favor of the Most Reverend Father Nicholas Contieri, of the Order of Saint Basil, Archpriest of Caieta.

The archiepiscopal see of Sardinia, vacant due to the assignment of the priestly title of Saint Sylvester in Capite to the Most Reverend and Venerable Vincent Vannutelli, Cardinal Priest of the Holy Roman Church; by the favor of the Most Reverend Father Salvator Palmieri, of the Congregation for Missions, from the Precious Blood of Our Lord Jesus Christ, Archpriest of Rossano.

The archiepiscopal see of Nisiben, vacant due to the translation of the Most Reverend Father Leo Meurin, of the Society of Jesus, to the See of Port-Louis; by the favor of the Most Reverend Father Joseph Giusti, Bishop of Arezzo.

The metropolitan see of Turin, vacant due to the death of the Most Reverend Cardinal Alimonda, of the Holy Roman Church, who was the last Archbishop of that see and who died outside the Roman Curia; by the favor of the Most Reverend Father David, of the Counts Riccardi, Bishop of Novara.

The metropolitan see of Mohilev, vacant due to the death of the Most Reverend Alexander Casimir de Dziewaltovo Gintowt, the last Archbishop of that see and who died outside the Roman Curia; by the favor of the Most Reverend Father Simon Martin Kozowski, Bishop of Luck and Zhytomyr.

[*Latin ed. p. 325*]

FROM THE CONSISTORY ACTS 325: The Archiepiscopal Church of Caietan is vacant, by the translation of the Reverend Father Nicholas Contieri from the Order of St. Basil to the titular Archiepiscopal Church of Farsaglia; with the favor of the Reverend Father Francis Niola, Bishop of Lacedonia. The Metropolitan Church of Rossano is vacant, by the translation of the Reverend Father Salvatore Palmieri from the Congregation of the Most Precious Blood of Our Lord Jesus Christ to the titular Archiepiscopal Church of Sardinia, with the favor of the Reverend Donati Dell'Olio, a priest of Vigil, under the Archbishop of Trani. He, born of legitimate, Catholic, and honorable parents in Vigil, under the Archbishop of Trani, and having reached the forty-fourth year of his age, having held the administration of the schools of the local seminary, and the Prefectship of studies and discipline, teaching philosophical disciplines there, and explaining the Summa of the Angelic Doctor, the Canon of Vigil, having previously renounced, is now appointed. The Metropolitan Churches of Gnesen and Posen are mutually and perpetually canonically united, being vacant due to the death of the Most Reverend Julius Joseph Dinder, the last Archbishop of those sees, who died outside the Roman Curia, with the favor of the Reverend Father Florian Stablewski, a priest of the Archdiocese of Posen. He, born of legitimate, Catholic, and honorable parents in the city of Transtadii, Wschowa, in the Archdiocese of Posen, and having surpassed the fiftieth

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year of his age, having already received the doctorate in sacred theology, was recently added to the ranks of His Holiness's intimate chambers for honor, and then among the Apostolic Protonotaries, as if among those participating. The titular Episcopal Church of Amas is vacant, by succession to the united Cathedral Sees of Melphitene, Terlizzi, and Juvenace, the Reverend Father Paschal Corrado, with the favor of the Reverend Father Gherardo Arardi, the resigning Bishop of Carpi. The Cathedral Church of Arezzo is vacant, by the promotion of the Reverend Father Joseph Giusti to the titular Archiepiscopal Church of Nisiben, with the favor of the Reverend Father Domnin Donnini, Bishop of Deinen. The Cathedral Church of Verulam is vacant, due to the death of the Most Reverend John Baptist Maneschi, the last Bishop of that see, who died outside the Roman Curia, with the favor of Paul Fioravanti, a priest of Nepeta. He, born of legitimate, Catholic, and honorable parents, and having reached the fiftieth year of his age, was chosen as Rector of the Seminary of Nepeta, having performed the duties of Examiner for the Synod and Visitor, having previously held the Canonry of Penance, and until now holding the highest dignity of Archpriest in the Cathedral Basilica of Nepeta. The Cathedral Church of Luceria is vacant, due to the death of the Most Reverend Joseph Mary Cotellessa, the last Bishop of that see, who died outside the Roman Curia, with the favor of the Reverend Father Carmel Ciotola, a priest of Naples. He, born of legitimate, Catholic, and honorable parents in Naples, and having reached the fifty-eighth year of his age, having performed the duties of Pro-Rector of that archiepiscopal seminary, and in the Congregation for the care of young men who dedicate themselves to studies, as Pro-Moderator, as spiritual director, and as permanent revisor of the Royal Hospital for the Poor, and of the Virgin Girls under the title of St. Anne, and of the Neapolitan Clergy, is now appointed. The Cathedral Church of Vigliano is vacant, due to the death of the Most Reverend Peter Joseph Degaudenzi, the last Bishop of that see, who died outside the Roman Curia; with the favor of the Reverend Father James Merizzi, a priest of the Diocese of Como. He, born of legitimate, Catholic, and noble parents in Tirano, of the Diocese of Como, and having surpassed the fifty-seventh year of his age, having already received the doctorate, is appointed.

[*Latin ed. p. 326*]

326 FROM THE CONSISTORY ACTS concerning matrimonial causes, the Episcopal Delegate, and the Deputy for the discipline of seminaries, having performed his duties, the former Cathedral Chancellor of Como, and until now a Canon and theologian, then General Pro-Vicar, and having renounced his position as Capitular, was added. He was also included among the Pro-Synodal Examiners, and among the officials of His Holiness's household for honors, and as an Apostolic Notary, among those participating. The Cathedral Church of Carpen, vacant, was transferred to

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the titular Episcopal Church of Amathe by the Reverend Father Gherardi Araldi; with the favor of the Reverend Father Andrea Righetti, a priest of the Diocese of Burgos of Saint Domninus. He, born of legitimate, Catholic, and honorable parents in the parish of Saint Columbanus, in the place commonly called Cornice, in the Diocese of Brugnato, and having surpassed the fortieth year of his age, was numbered among the Examiners and Judges of the Synod of his diocese, having performed the duties of General Vicar for spiritual matters, and having previously renounced his position as Canon Theologian of the Chapter of Burgos of Saint Domninus. The Cathedral Church of Collen, vacant, was filled by the death of the Most Reverend Aloysius Traversi, the last Bishop, who died outside the Roman Curia, with the favor of the Reverend Father Alexander Toti, a priest of Siena. He, born of legitimate, Catholic, and honorable parents, and having reached his fifty-eighth year, having previously been awarded a doctorate in sacred theology, and then in canon law, was appointed Preceptor of Holy Scripture in the Archdiocesan seminary, and also performed the duties of ecclesiastical censor for books intended for public publication, and as a Pro-Synodal Examiner, having previously been the parish priest of Siena of Saint Peter, commonly called in Banchi, he renounced his position. The Cathedral Church of Guastalla, vacant, was filled by the transfer of the Reverend Father Andrea Ferrari to the See of Como, with the favor of the Reverend Father Peter Respighi, a priest of Bologna. He, born in Bologna of legitimate, Catholic, and honorable parents, and having surpassed the forty-eighth year of his age, having previously been awarded a doctorate in sacred theology, and in both civil and canon law, upon returning to Bologna, he was appointed to give lectures on liturgy and Christian antiquity in that seminary. He, having previously renounced his position as Archpriest of the parish of Saints Gervasius and Protasus of the Plebs of Budrio in his own archdiocese, and having performed the duties of Defender of the accused at the Holy Office in the Metropolitan Curia, and as a consultant for the Society which bears the name of the Holy Infant, was joined to the priests who are dedicated to the pious work of Dal Monte. The titular Episcopal Church of Caesaropolitan, under the Archbishop, was vacant, and was filled by the transfer of the Reverend Father Felix Midon to the Church of Osaka, recently raised to the rank of Cathedral by His Holiness in Japan, with the favor of the Reverend Father Stephen Porro, a priest of Andria, who was also appointed as an auxiliary to the Most Reverend Frederick Mary Galdi, Bishop of Andria. The Reverend Father Stephen Porro, born in Andria of legitimate, Catholic, and honorable parents, and having reached his fifty-fourth year, having performed the duties of Rector of the Congregation of noblemen under the name of Servants of Mary, and having previously held the position of Canon of the Cathedral Chapter of his homeland, and having until now held the dignity of fifth Prior, was added among the closest officials of His Holiness, beyond the established

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number. Our Most Holy Lord held a public Consistory in the Royal Hall of the Apostolic Palace of the Vatican for the conferring of the Red Hat upon the Cardinals Anthony Joseph Gruscha, created and declared on the first of June of this year, Aloysius Ruffo of Scilla, and Aloysius Se-

[*Latin ed. p. 327*]

327 benefices created and declared on December 14th of this year; and after the public Consistory, in the Upper Halls of his Apostolic Palace at the Vatican, he also held a Secret Consistory, in which he silenced the appeals of the Roman Gruscha, Ruffo of Scilla, and Sepiacci; then he proposed the following sees: From the CONSISTORY ACTS, the Cathedral Church of Durango, whose cathedral was declared completely extinct, and it was simultaneously raised to the rank of Metropolitan See, favored by the Most Reverend Doctor Joseph Vincent of Montesilvano, until now Bishop of Durango; the Metropolitan Churches of Cologne and Cacsien, perpetually and canonically united, vacant due to the death of the Most Reverend Lewis, while he lived, the Cardinal Prefect Haynald, the last Archbishop of those sees, who died outside the Roman Curia, favored by the Most Reverend Doctor George Császka, Bishop of Zips. The Metropolitan Church of Valladolid, vacant due to the death of the Most Reverend Mariano Lichäelis Gómez, the last Bishop of that see, who died outside the Roman Curia, favored by the Most Reverend Doctor Anthony Haria, Bishop of Cascaiares and Azara, and of Calaguriti and Calceatensis. The Cathedral Church of Linares, exempting it from the metropolitan jurisdiction of the See of Guadalajara, declaring its cathedral completely extinct, and simultaneously raising it to the rank of Metropolitan See, favored by the Most Reverend Doctor Hyacinth Lopez, until now Bishop of Linares. The Cathedral Church of Antequera, declaring its cathedral completely extinct, exempting it from the metropolitan jurisdiction of the Mexican See, and simultaneously raising it to the rank of Metropolitan See, favored by the Most Reverend Doctor Eulogius Gregory Gillow, until now Bishop of Antequera. The Metropolitan Church of Strigon, vacant due to the death of the Most Reverend John, while he lived, the Cardinal Prefect Simor, the last Archbishop of that see, who died outside the Roman Curia; favored by the Reverend Claudius Francis Vaszary, of the Order of Saint Benedict, Priest of the Veszprém diocese. He, born of legitimate, Catholic, and honorable parents in the place called Keszthely, in the County of Zala, in Hungary, in the Veszprém diocese, and having reached his sixtieth year, was chosen as Professor and Director of gymnasiums, an Arch-Abbot of the Order of Saint Benedict, exempt and of the Holy Mountain of Pannonia, Prelate of the ecclesiastical district of the Arch-Abbatial Holy Mountain, Abbot, and perpetual President of all the convents of his Order throughout the Kingdom of Hungary, has renounced. The Metropolitan Church of Mexico, in North America, vacant due to the death of the Most Reverend Pelagius

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Anthony de Lavastida, the last Archbishop of that see, who died outside the Roman Curia, favored by the Reverend Prosper Mary Alarcon, Priest of the Mexican Archdiocese. He, born of legitimate, Catholic, and honorable parents in the city commonly called Lemma, of the Mexican Archdiocese, and having surpassed his sixty-fourth year, having previously been awarded a doctorate in sacred theology, having devoted himself to the care of souls in the parish Church of the True Cross, a Canon of the Mexican Chapter, and until now Dean, and having renounced the same office, while the See was vacant. The Cathedral Church of Paderborn, vacant due to the death of the Most Reverend Francis Drobe, the last Bishop of that see, who died outside the Roman Curia, favored by the Most Reverend Doctor Theophilus Huberli Simar, Priest of the Cologne Archdiocese. He, born of legitimate, Catholic, and honorable parents in Eupen, of the Cologne Archdiocese, and in his sixth

[*Latin ed. p. 328*]

328 FROM THE CONSISTORY ACTS, having reached the fiftieth year of his age, he was, some time ago, granted a doctorate in sacred theology, and for many years he held the professorship of moral and dogmatic theology, apologetics, and sacred Scripture at the University of Bonn. Among the theologians of the Monastery academy, and among the Prelates attached to the Holy See, he was appointed to the vacant position of Cathedral Church of Seepusien, united with the Metropolitan Sees of Colocen and Bacsien, by the appointment of the Reverend Father George Császka; with the favor of the Reverend Father Paul Szmrecsányi, a priest of the Archdiocese of Agriensis. He was born in Darócz, County of Sáros, in the diocese of Cassoviensis, from legitimate and noble parents, and having reached the forty-sixth year of his age, he served as a preacher in the Metropolitan Conventus of Agriensis, and for many years he governed the Curia of the Archbishop of Agriensis, performing the duties of Protocolist and Archivist, Secretary of the Archiepiscopal Consistory, and even Chancellor. The Cathedral Church of Munkacsiensis, of the Greek-Catholic Rite of the Ruthenians, united with the Holy Roman Church, became vacant through the death of the Most Reverend John Pásztelyi, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Julius Firczak, a priest of the Greek-Catholic Rite of the Ruthenians of the diocese of Munkacsiensis. He was born from legitimate, Greek-Catholic, and honest parents, and having surpassed his fifty-fifth year of age, for many years he served as a Professor of Dogmatic Theology in the Royal-Episcopal Lyceum, as Director of the Unghvarin orphanage for girls, and as Rector of that seminary, having previously been appointed a Canon of Munkacsiensis, and then, until now, he has been honored with the dignity of Major Prefect. The Cathedral Church of Crisien, of the Greek Rite, united with the Holy Roman Church, became vacant through the death of the Most Reverend Elias

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Hranilovic, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Julius Drohobeczki, a priest of the diocese of Munkacsiensis. He was born from legitimate, Greek-Catholic, and honest parents in Karacsony-Falva, in the County of Marmaros in Hungary, in the diocese of Munkacsiensis, and having surpassed his thirty-eighth year of age, he was appointed Prefect of studies and Professor, and Director of preparation, in the theological seminary of Ungvariensis, and he also served as Archivist of the diocese. The titular Episcopal Church of Zenopolitan, under the Archbishop of Seleucia, became vacant through the death of the Most Reverend Aloysius Moccagalla, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Francis Albini Simor, a priest of the diocese of Zytomiriensis, who was also appointed as a suffragan of Mohiloviensem. The Reverend Father, Senior, was born from legitimate, Catholic, and noble parents in the village of Dubowiec, in the diocese and parish of Zytomiriensis, and having surpassed his fiftieth year of age, he was granted the degrees of Candidate and Doctor in sacred theology, and he renounced the dignity of Canon of Mohiloviensem, and Cathedral Canon of Luceoriae and Zytomiriensis, and there he served as Cathedral Penitentiary, and Professor of Greek and dogmatic theology in that seminary. Having successively held the offices of Canon, Prefect of studies, and Primicerius, or Cantor, he came to Rome twice, and was attached to the Prelates attached to the Holy See. The titular Episcopal Church of Pentacomien, under the Archbishop of Bostrense, became vacant through the promotion to the titular archiepiscopal Church of Cyrene of the Reverend Father Andrea Navarre, Apostolic Vicar of Novae Ghineae, with the favor of the Reverend Father Paul Padilla, a priest of the diocese of Saltensis. He was born from legitimate, Catholic, and honest parents in the place commonly called Iuiuy, in the diocese of Salta, in the Argentinensi Republic, and having surpassed his forty-third year of age, he was granted a doctorate in sacred theology.

[*Latin ed. p. 329*]

From the Consistorial Acts: The honorary doctorate in literature and theology was conferred upon the Rector of the seminary in Salta, and the Canon of the Chapter of Salta, having resigned from his position as Vicar General due to the vacancy of the see. The church of Saint Martha was bestowed upon Raphael Celedón, from the Diocese of Saint Martha, as Rector of the parish church of Ocana. Subsequently, the following churches were assigned in the form of Briefs: The Archiepiscopal titular church of Cyrene was assigned to the Reverend Father Ludovico Nazario Begin, appointed as Auxiliary Bishop to the Most Reverend Archbishop of Quebec. The Metropolitan Church of Zadar is vacant, due to the death of the Reverend Monsignor Peter Dominii Maupas, the last Archbishop, who died outside of Rome; it is now bestowed upon the Reverend Father Gregory

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Raicevic, a priest of the Diocese of Ragusa. He was born in Ragusa, of legitimate, Catholic, and honorable parents, in the suburb near the parish of Saint Andrew the Apostle, and has surpassed his sixty-fifth year. He was formerly Rector of the Central Theological Seminary, Examiner and Judge Prosynodal in the archdiocese of Zadar, Counselor of the ecclesiastical tribunal for marriage cases, and Official of the Curia for all Briefs and Pontifical Rescripts pertaining to dispensations from impediments to marriage. He was previously the Archdeacon of the Metropolitan Chapter of Zadar. The Archiepiscopal titular church of Edessa is vacant, due to the death of the Reverend Monsignor Thomas Michael Salzano, the last Archbishop, who died outside of Rome; it is now bestowed upon the Reverend Father Philip, a priest of the Order of the Knights of Castracane de Antelminelli, from Cagli. He was born in the city of Cagli, of legitimate, Catholic, and noble parents, and has reached his forty-first year. He has been awarded the doctoral degree in Canon Law, was appointed Canon of the Cathedral of Cagli, and was recently appointed to the intimate circle of the Holy Father among the Participants. He had previously resigned as Canon of the Archbasilica of the Lateran and of the Vatican Basilica. The church of Premislien, for Ruthenians, is assigned to the Reverend Father Julian Pelecz, Bishop of Stanislaus. The Cathedral Church of Stanislaus, of the Greco-Ruthenian Rite, is vacant, due to the translation of the Reverend Father Julian Pelecz, Bishop of Premislien, of the same Rite, and is now bestowed upon the Reverend Father Julian Kujlowski, titular Bishop of Hephaestia. The Cathedral Church of Saint Thomas in Guayana, in the territory of Venezuela in South America, is vacant, due to the death of the Reverend Monsignor Emmanuel Philip Rodríguez, the last Bishop, who died outside of Rome; it is now bestowed upon the Reverend Father Anthony Mary Duran, a priest of Truxillo. He was born in the city of Truxillo, of legitimate, Catholic, and honorable parents, and has reached his fifty-third year. He was previously the parish priest of the Cathedral of Barquisimeto, then a Canon of the Merced, and until recently, Dean. The Cathedral Church of Calaboz, or Calabozo, in the territory of Venezuela in South America, is vacant, due to the death of the Reverend Monsignor Sallustian Crespo, the last Bishop, who died outside of Rome; it is now bestowed upon the Reverend Father Philip Neri Sendrea, a priest of the Diocese of Mérida. He was born in the town of Our Lady of Altagratia, in the Diocese of Mérida, of legitimate, Catholic, and honorable parents, and has surpassed his forty-seventh year, and has recently studied sacred theology.

[*Latin ed. p. 330*]

330 From the Consistorial Acts: Doctor [Sebastiano Mesmer] was awarded a doctoral degree; [James Schenebach] was appointed as Coadjutor Parochus of the Matricis Church dedicated to the Holy Apostles Peter and Paul; [Ignatius Hortsmann] was appointed as Provisor and

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General Vicar and Governor of the late Prelate of Colabozo; and, with that See vacant, [Charles Mauritio Graham], elected as perpetual Coadjutor of the present Archbishop of Plymoul, was appointed as Capitular Vicar for the present. The Episcopal titular Church of Gratianopolitan is vacant, due to the death of the Very Reverend Father Lawrence Mary Cordier, the last Bishop of that See, who died outside the Roman Curia, to the benefit of the Reverend Father Ferdinand Kalous, a priest of the archdiocese of Prague. He was also appointed as an auxiliary to the Most Reverend and Reverend Lord Francis de Paula, with the title of Saints John and Paul, a priest and Cardinal of the Archdiocese of Prague, under Archbishop Schönborn. The Reverend Father Ferdinand Kalous was born of legitimate, Catholic, and honorable parents in the village of Cerny Vul, in the archdiocese of Prague, and, having reached the fifty-sixth year of his age, was appointed as a Canon of the Collegiate Church of Veterobolesla in the archdiocese of Prague; he was then added among the Cardinals in waiting and among the Prelates of the Papal Household. [Goelestino Felice Chonvellan] was appointed as Vicar Apostolic of Sutchuen Orientalis in China. After these matters, the Holy Father spoke in the Roman manner to the Cardinals Gruscha, Ruffo, and Sepiacci, and the following were instituted for the Pallium: the Churches of Taurinen, Mohilovien, Caietan, Rossanen, Gnesnen, and Posnanien; Aretin, De Durango, Colocen, and Baesien; De Linares, De Antequera, Strigonien, Mexican, Iadren, Iohien, Bombayen, and Vallisoletan. Finally, the Holy Father, handing the cardinal's ring to the aforementioned Cardinals, assigned to the Most Reverend Gruscha the title of Saint Mary of the Angels; to the Most Reverend Ruffo, the title of Saint Mary Transpontine, and the title of Saint Prisca; and to the Most Reverend Sepiacci.

[*Latin ed. p. 331*]

331 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MILETUS, ON MARRIAGE, dated September 12, 1891, Session 24, Chapter 1, Concerning Reforms in Marriage. SUMMARY OF FACTS. Raphael Valensise, from the town of Polistena in the diocese of Miletus, having entered into a preliminary marriage agreement, while being 29 years of age, contracted marriage on August 5, 1880, in Tarvisio, with Rosa Loffredo, from the marquisate of Mongiuffi, who was 22 years old. On the same day, the civil act of marriage was also completed, and the spouses began their life together. It is reported that on the very first night of their cohabitation, the husband demonstrated himself to be incapable of performing the marital duties. Consequently, after several unsuccessful attempts to consummate the marriage, the spouses separated, although Raphael immediately left the house of his wife, where he had previously resided. Subsequently, on September 16 of the same year, Rosa brought her husband before a lay judge, requesting that the civil bond be declared null and void due to his

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impotence. However, the Tarvisio tribunal, after a lengthy legal dispute and the opinions of several experts, rejected the plaintiff's petition with a judgment dated April 16, 1887. This judgment, however, was later upheld in Venice on appeal, taking into account the opinions of other medical experts, in September 1888, with the judgment: that the marriage was null due to the husband's impotence. Almost a year later, Raphael approached the curia of Miletus, requesting that the Apostolic See would deign to grant a dispensation from the marriage, which was valid but not consummated; to which petition the woman promised not to object.

[*Latin ed. p. 332*]

332. MILETEN. A Synopsis of the Case. The husband's advocate, having obtained from the Apostolic See the authorization to use the testimonies admitted in civil proceedings concerning the physical condition of the woman*, decided to defend the dispensation from a valid but unconsummated marriage. With these preliminaries, concerning Raphael's sworn testimony, it is noted that he retracted what he had previously stated simply in the civil court, so as not to expose himself to sacrilege by violating an oath before an ecclesiastical judge. He reports that he was indeed affected by shame, because no one is obliged to condemn himself. But when it is a question of a sacred bond, I must confess, he said, not only that I have not consummated the marriage, but that I have not even had an erection, which I myself had previously confessed to the examiner of the defender of the marriage bond. The woman, also questioned, stated that the husband had been unable to consummate the marriage even after a month of constant treatment. The husband's advocate claims that witnesses of good faith can corroborate the testimony of both spouses. For, when formally questioned by the judge regarding truth and religion, each witness testifies to Raphael Valensise's integrity; and they are certain that he has not consummated the marriage. And five other witnesses declare that they are convinced, and each believes that reconciliation of the parties is absolutely impossible. The same advocate affirms that witnesses were duly questioned in the court of Cuneo. And the woman's mother attributes the discord to impotence; and she believes that reconciliation of the parties is impossible: which other witnesses also confirm. She also recalls that other witnesses, residing in Messina, were examined by the archiepiscopal court of Messina. She states that these witnesses, having sworn an oath under penalty of perjury, testified not only that Rosa Loffredo is a religious woman and that she does not lie, but also that they believe her confession to be true.

[*Latin ed. p. 333*]

MILETEN. 333: You state the circumstances under which the cause of the separation of souls must be granted. After these points, the advocate,

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approaching the matter more closely, observes that the question is whether a dispensation should be granted, according to the prayers of Raphael and the conclusions of the Miletian judge. And at first, the advocate maintains that the acts, having been validated by pontifical benevolence, clearly demonstrate the lack of consummation of the marriage, at least due to the relative impotence of the man. Then, the advocate begins with fundamental principles, stating that, when there is no consummation, a dispensation should rather be granted, provided that canonical causes are present. For, he argues, the spouses are not made one flesh when the union has not taken place; in this case, the divine precept does not apply, because, in reality, they were not two made one in the flesh. Therefore, as long as the consummation of the marriage is absent, the absolutely indissoluble union vanishes. Hence, the Holy See, interpreter of divine law in these cases, does not demand rigorous proofs that would be required concerning the nullity of the marriage, and therefore, it is sufficient to demonstrate relative impotence, according to the common opinion of canonists; *Ursaya, tom. III, Disc. 21, n. 13, et passim*. Therefore, the advocate observes that the rigor of civil law, as in the case of article 107 of the civil code, is not required by the Church, although it is said that, after a long period of eight years, a judgment concerning impotence has been rendered. Prudentius, he argues, acts prudently in declaring that the Church also recognizes the nullity of marriage due to relative impotence, which would have resolved the controversy more quickly, since, as Sánchez de Matrimonio teaches, book VIII, Discourse 53, number 3, "an absolute and total impediment is related to an absolute marriage, just as a relative and particular impediment is related to a particular marriage. Just as the former invalidates the entire marriage contract, so too does the latter invalidate the particular one." The advocate, applying these and other considerations to the present controversy, and drawing upon his expertise concerning the body of the Valentian, seeks to refute all objections.

[*Latin ed. p. 334*]

334. The signs and characteristics of relative impotence are, without controversy, to be found; although, concerning absolute impotence, the doctors dare neither to affirm nor to deny anything, according to their related expertise. All of this derives the greatest weight from the experiment, or the "arena" of the bridal chamber, where, according to what is reported, Rosa, after being examined by all, remained a virgin, as the archpriest contends. However, the doctors who examined the genitalia of Raphael in Parthenope are said to have found all the signs and characteristics that would truly confirm his prior impotence. It is believed that Raphael, disturbed by the novelty of marriage, after fruitless attempts, consulted the doctors Ohiaron Casoni and Paris, who declared before the judge that the same complaint arose from his age of twenty years. They also declared that

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it would be difficult for him to be fit for copulation in the future; nevertheless, the orator observes, they did not dare to pronounce an explicit judgment concerning Raphael's impotence, due to the external structure of his body. However, the orator himself does not seem to approve of this judgment, because the doctors, neglecting the multiple expert opinions concerning Rosa's virginity, did not wish to observe whether the externally perfect mechanism was fulfilling its function. And, in truth, concerning the experiment in the bridal chamber, the experts, whether in diagnosis or in conclusions, have recognized Rosa as a virgin, as the advocate affirms. To these, in addition to others, the archpriest Filippi is said to adhere. And the advocate affirms that nothing could be opposed to this concerning her virginity, even if the first experts were refuted by more expert ones, while they themselves acknowledged all the signs of virginity in the woman, yet found some injury in the hymen. The orator strives to show, by presenting other expert opinions, that the injury was congenital in origin. This is admitted by both ancient and modern authors, among whom are Tortosa, *Istituzione di medicina penale*, Somm. 11, and Puccinotti, *Lezioni di medicina legale*, lez. II, n. 6. Among these more recent authors,

[*Latin ed. p. 335*]

MILETEN. 335 Tardieu observes that it is necessary to consider the matter carefully, and he reproduces the arguments of that author more fully in the summary. He adds that this objection is not new, since the Holy Congregation has, on occasion, consulted on certain cases where such injuries and impediments were raised, as in the case of the dispensation for marriage, both consummated and not consummated, on June 9th and September 22nd, 1866, and more recently in the case of P. r aten on May 29th, 1869. He states that the specific details of these cases, and the reasons presented by the physicians involved, should be carefully considered. Furthermore, he believes that the reasons and motivations for the decision presented by the Tribunal of Venice should be taken into account, which he explains involved examining the state of the woman's virginity in comparison with the man's impotence, and not in an abstract manner. He believes that these reasons for the decision are entirely consistent with the theories established in this Holy Congregation. Indeed, he states that, according to canonists, when dealing with impotence, the general rule is always to consider it as permanent and pre-existing: Engel, *Lib. IV*, *decret*, title 35, n. 9. Reinffenstuel, cited, *lib.*, title 15, n. 29: especially if the woman has been unable to consummate the marriage from the beginning of the marriage. Mascardus, *De probat*, conclusion 1229. These doctrines are embraced by the universal criterion in Ursaya, part 1, discourse 12, n. 248, where it is stated: "When marriage cannot achieve its purpose, one should, in doubt, rule against the marriage, lest those who are inclined to favor it be turned against all the rules of law, as Sánchez, *De matrim.*, book 7, disp. 103,

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n. 1, states. It is proper to favor the value of marriage when the marriage can achieve its purpose, namely, the good of offspring, or the avoidance of fornication, where one of the spouses is impotent, but in both cases, this purpose is frustrated." And with regard to permanence, the same author, citing numerous authorities, demonstrates that there is a very strong legal presumption that the same disability that existed in the past continues to exist in the present and will likely increase in the future, according to the common saying: "He who is not fit today, will be even less fit tomorrow."

[*Latin ed. p. 336*]

336. MILETEN. Furthermore, the advocate affirms that the difficulties which he has discovered concerning absolute impotence, as opposed to relative impotence, do not, from a young age and from the apparent organic confirmation of the body, invalidate the fact. Granted, and not conceded, that a man possesses a spermatorrhea free from infection and with unimpaired powers, and is endowed with the regular structure of the body, therefore, the intrinsic vice of impotence cannot be excluded. And he recalls that the doctors agree unanimously on this point, and that the Holy Congregation itself is widely of this opinion; Cocchius in *Disceptationes Physicae et Anatomicae*, § 4; Marchangelus in *Dissertatio Physica et Medica*, § 6; and among others, Barzellotti in *Medicina Legale*, cap. III, lib. 1. The advocate supports these doctrines with examples which are reported in the *Thesaurus Resolutionum*, among which is the case in Neapolitana, on the day of April 24, 1858, between John De Rosa and Antonia Volpicelli, whose marriage was dissolved by dispensation, and John De Rosa was forbidden to enter into other marriages without the consent of the Holy Congregation; although the man possessed a herculean physique, and experts called him an example of virility. Nevertheless, even if the judgment of experts and the established facts were lacking, the impotence of the man, and consequently the consummation of the marriage, would still be established with certainty, according to the advocate, by the following reasons, which he enumerates as follows: 1. "Certainly," he says, "advice is sought from physicians during the days of the fertile period to restore the powers for conjugal intercourse." 2. "Nor is it otherwise with medicines, such as cantharides and phosphorus, taken in the form of 'little candies,' which medicines and consultations with a physician are considered by doctors to be the highest form of proof," he affirms, citing Ursaya, vol. I, discourse 12. 3. "Nor do those who consider themselves to be potent act otherwise." To these, he adds: 4. "The sadness of Raphael on the very solemnity of the wedding, when the minds of the betrothed are stirred to joy and happiness." 5. "Finally, the oath and sincere confession of both, especially since no one is deceitful to his own detriment." For Coscius teaches in *De Separatorum*,

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lib. III.

[*Latin ed. p. 337*]

MILETEN. 337 n. 156: "If it is established by the testimony of the parties, to which is added the sworn testimony of seven witnesses with concurring faith, an examination of the bodies is not necessary; this is deduced from chapter *Proposuisti*, and is also confirmed by the resolutions of the Holy Congregation in *S. Andrien*, April 26, 1788, and January 27, 1844. Therefore, it must be believed," says the advocate, "that Raphael and Rosa, when confessing before God from their conscience, were unable to consummate the marriage. Consequently, all the antecedent, concomitant, and subsequent circumstances induce a moral certainty, which in human affairs is equivalent to evidence, especially because the testimony of the woman is very reliable, which, as Cardinal Cossi says, is an expert in the *arena* of the conjugal chamber, and more so. Indeed, invoking God as witness, she swore that the limits of reason were not exceeded in the marriage. To this, the advocate adds, setting aside any unusual remedies by which impotence can be cured, the resolutions of the Holy See, by which dispensation has been granted due to moral persuasion, among which are: *Gandaven*, December 17, 1843; *Parisien*, March 28, 1851, and June 26, 1857; *Casnadien*, June 6, 1863. And he also points out that, most recently, the same criterion of moral certainty was used in *Tergestina* in 1876, and most recently in *Wladislavien* on June 15 and December 14, 1889, to grant dispensation from a marriage that was valid but not consummated (1). Speaking of the reasons for dispensation from a valid marriage, he says: 'Although not minor reasons, but very serious ones are present in this case, and even the Bishop himself testifies, the conclusion is: 'It is easily understood that, in the case we are discussing, the reasons required by law have been presented, so that a petition for dispensation from a marriage that is valid but not consummated can be made, both because, according to civil law, the marriage was celebrated before the government; and also because of very serious disagreements, which would undoubtedly arise if the bond of marriage still existed.'" To this favorable vote of the Episcopal Curia, the testimonies of the witnesses are added, who, in the Acts of the causes for dispensation, Volume XXIV, page CCLXXXII, number 22.

[*Latin ed. p. 338*]

338. MILETEN. They lead to discord among souls. Where there is an invincible aversion of the mind, marriage will never be consummated, and in such cases, a dispensation is more easily granted "in consideration of the living," because in these circumstances, the dispensation is not strictly and rigorously such, but rather a prudential administration of justice, which befits the Prince, by declaring the intrinsic nullity of the marriage under a more honorable and expedient title of dispensation. *De Luca, De Matrim.

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Disc. VII, no. 7; and Ursaya, tom. II, disc. VII, throughout. The Sacred Congregation in Corduba, September 20, 1840, etc. The advocate, however, contends that there is a doubt concerning the value of the sacrament, which, he says, is most certainly found in the body, which is the matter upon which the consent and form of the sacrament depend; since, in the case of unsuitable matter, the word does not suffice to transform the element into a sacrament. Regarding the matter, see Cose, cit., disc. no. 386; there, "For since we are dealing with the introduction of prejudice and injury to the sacrament itself, the rule proceeds directly contrary, that in doubt, one must stand for the exclusion of marriage, in consideration of the living, because in the external forum, in which the Church judges, it is more tolerable and honorable, according to the discipline of the Church, to absolve the marriage, than to provide, by the name and law of marriage, an opportunity for incontinence, and to foster continuous sin." De Iustis, De disp., cit., I. Sánchez, Rota, etc.

REMARKS OF THE DEFENDER OF THE SACRED BOND. The advocate of the matrimonial bond divides his remarks into two parts. In the first part, presenting the testimonies of doctors, he reports that the archiatrists Valsuani, Cristofori, and Porro, who, at the order of a lay magistrate, examined the body of Rosa in Milan on October 5, 1886, stated that perfect virginity, in the legal sense, could not be maintained in the body of Rosa Loffredo; because, given the condition in which she was found, it is possible, or it could easily be possible, for a male organ to penetrate. He recounts that Rosa, having borne the judgment of the aforementioned doctors with great distress, sought refuge elsewhere, and eventually found doctors Tibone, Inverardi, and...

[*Latin ed. p. 339*]

MILETEN. 339 In Augsburg, Taurino, the physician Filippi of Fiorentino, and certain others, who seem to wish to support Rosa, appear to be changing the state of the question. But this is considered to be done ineptly, since the experts from Milano have not denied Rosa's virginity, but rather, they admit that her defloration is not proven by the absence of a single sign of virginity. Furthermore, these same doctors, in the aforementioned report from the experts of Milano, which they are examining, are noted to arbitrarily remove words that are harmful to the cause. But leaving this aside, the defender of the bond believes that rather, those things should be considered that were reported by the doctors who examined the body of Raphael Valensise, namely, the archiaters Oaminiti, Cardarelli, and De Crecchio, who, recalling the report from Milano, concluded thus: it is clear, from the examination of the hymen of Rosa Loffredo, that it is not permissible to infer her physical virginity, which is the subject of the question, because there are absolutely no anatomical signs; and it is easily possible to introduce a finger into her hymen which could reach the uterus. After

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these things, speaking of the physical examination of Raphael, which, as mentioned above, the lay tribunal entrusted to the aforementioned three Neapolitan experts, he believes that, although they performed their duties using illicit means, their conclusions must be highly valued. Indeed, they wrote: that the organic constitution of Raphael, and the conformation of his genitals, are such that it is not permissible to presume him to be inept for intercourse. For it is not sufficient to presume Raphael's impotence, but rather, it must be entirely established, especially because the lack of consummation of the marriage cannot be proven by Rosa's examination. But also, the facts, by which the Neapolitan doctors presumed Raphael's impotence, the defender believes to be of valid importance. For on May 26, 1890, in the court of Miletus, before the ecclesiastical judge, Raphael Valensise was questioned by the defender of the marriage: whether he had felt any affection before the marriage began.

[*Latin ed. p. 340*]

340 MILETEN. The examining physician gave a negative response. He also gave the same response to the lay judge who questioned him, and added that he had always been fully virile. These same facts are confirmed by the archpriest Lof~fré and by John Tigani. The same thing was observed to be testified to by relatives, family members, and neighbors. This is repeated by his father, Michael Valensise, and also by another uncle, Joseph, Dominic Custarone, Joseph Lombardi Oliva, and several others, who also mention other instances or pending marital negotiations. In another section of the arguments, the defender contends that Raphael and Rosa themselves, through their own confessions, refute the claim. He recalls that the man, on January 20, 1885, before the lay magistrate, confessed: that for five nights, from the beginning of the marriage, he had unsuccessfully attempted the conjugal act; whereas, on the contrary, he had had a perfect act on the very first night, after the marriage was celebrated, but with some difficulty; for which difficulty he attributed the cause to a feverish illness from which he had been suffering. He notes that this consummation of the marriage was confessed by Rosa Loffredo herself, and that the witness Moriondo did not dare to deny this before the aforementioned tribunal. Furthermore, the defender believes that it is not to be attributed to the groom, Moriondo, who wished to engage in the conjugal act, but rather to Raphael Valensise, if the spouses did not indulge in the conjugal act on subsequent nights. Nor is it easily understood how the modest young woman, Rosa Loffredo, could have tolerated the presence of a man in matters of this kind. After these points, in order to give weight to what Raphael Valensise wrote in the supplication presented to the Bishop of Miletus on August 30, 1890, and also to what he testified before the ecclesiastical judge regarding the lack of consummation of the marriage, the defender cites what Innocent III teaches in chapter 10 of *De probat.*: - there - ”Because that woman steadfastly

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asserted that T., of whom we are speaking, had relations with R.; and that T. publicly acknowledged his own son, especially because of the woman's insistence on food, and the aforementioned son was commonly..."

[*Latin ed. p. 341*]

MILETEN. 341 was both a fact and a habit; and the subsequent oath given by the same woman to the contrary is to be disregarded, since it is most unjust (according to legitimate laws) that what each person has clearly declared with his own voice should, in the same case, be able to invalidate his own testimony. However, the defender observes that if Raphael is ashamed to deny what he himself previously clearly declared, it is because he hopes to gain some advantage from this course of action, since, according to the most common saying, "nothing is done without a sufficient reason." Therefore, the defender fears that, through the present action, Raphael intends to gain profit, namely, by having the wife he detests dismissed, so that he may arrange a marriage with someone else. But the defender of the sacrament reminds us, granted and not granted, as he himself asserts, that if he was unsuitable to cohabit with Rosa Loffredo, he will be even more unsuitable for such a union in the future, as his own advocate affirms: "He who is not fit today will be less fit tomorrow." Nor can he appeal to a relative impotence, about which experts are silent. For it is said that Raphael was delighted throughout the entire night with insatiable pleasure in the embrace of Rosa, and that Rosa's genitals were not such as to present an obstacle. Therefore, the defender concludes that if Raphael did not cohabit with Rosa, which he considers to be furthest from the truth, he will never be able to cohabit with the *vidua* [Culmore]. Finally, there is Rosa's confession made to her stepfather, the horse dealer Moriondo, which the defender considers to be far from true. The testimony of the seventh witness does not restore the truth, because the witnesses saw and heard nothing at a time when there was no suspicion, and because he believes that sufficient trust should be given to spouses, and that, from what has been said, it is possible to dismiss them. Furthermore, he adds nothing about the reasons for the dispensation, because, since the foundation of the dispensation, namely, the lack of consummation of the marriage, is lacking, it would be useless to engage in further discussion. With these observations, the purpose was to dilute the following.

[*Latin ed. p. 342*]

342. MILETEN. It is doubtful whether consultation with the Most Holy Congregation is required concerning a dispensation from a marriage that is valid but not consummated in a certain case. RESOLUTION. The Sacred Congregation, after deliberation on September 12, 1891, judged it proper to respond: Affirmative, but it is forbidden for a man to enter into a second marriage without the consent of the Most Holy Congregation. LUGO

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SACRARUM FUNCTIONUM, December 12, 1891. Session 21, chapter 7, concerning reforms. In the town of Viareggio, within the territory of the archdiocese of Lugo, there exists a small church dedicated to God in honor of the Blessed Virgin Mary, the one greeted by the Angel, which is said to have originally been a parish church dedicated to the Prince of the Apostles. There, a pious confraternity of the same Most Holy Virgin has held a seat for a long time, bearing the same name; to which the sacred building, along with the sum of 50 scudi and the obligation to restore it, was granted by the governors of the Republic of Lugo on August 14, 1667. This is evident from the book of decrees of the public council, as well as from a public instrument of October 5, 1667, in which the aforementioned governors granted the confraternity the use and benefit of the church for the purpose of fostering and promoting the piety of the faithful towards the Most Holy Virgin greeted by the Angel, with the addition that such a concession should not prejudice the ownership that should remain with the aforementioned governors of the public council. Whether the council acted according to this right, and whether the property and ownership of the church truly resided with the governors of the republic, is not apparent. Furthermore, it appears that the Brothers Minor of the Order of Saint Francis, of stricter observance, have held certain rights in it, who are located in the church of Saint Anthony in the same town, from a remote time.

COMPENDIUM FACTI.

[*Latin ed. p. 343*]

In the region of Lucania, during a certain period, they exercised the care of souls. There exists in the pastoral visitation book of the Bishop Martin Guinigi, dated 1726, page 250, a document which reads as follows: "On March 24, 1621, the Sodalitium of the Most Holy Annunciation was established, and the Fathers retain the right of parochiality in that church; which, as such, was dedicated to Saint Peter; and even now, on the aforementioned day, the Fathers assemble to celebrate Mass with singing, and to perform the first and second Vespers, without any remuneration paid by the Sodalitium, in order to maintain the parochial right, as is evident from the public contract. It appears that the Minor Brothers of Saint Anthony have, for a period of two centuries, fulfilled the office of chaplain of the confraternity, and therefore, almost all the sacred functions in the church of the Most Holy Annunciation were performed through their ministry. Consequently, in the laws of the pious confraternity, approved by civil authority in the year 1832, in Chapter XXII, § 140, the following was stipulated: "Since it pertains to the Fathers of our Monastery of Saint Anthony of Padua to perform all the sacred functions of our church, in order to avoid the inconvenience of the Sodalitium having to pay remuneration for this purpose, the following shall be paid." Nothing appears to have been changed in this

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regard until the year 1857, when, through discussions between the Brothers and the confraternity, a path was revealed, from which later arose several controversies, some of which, in past years, were even brought before the Sacred Congregation. Nevertheless, the Franciscan Fathers continued to perform the sacred ministrations in the church of the Most Holy Annunciation until the year 1887, when the confratres, seizing the opportunity of the office not being fulfilled on the feast of the Purification of the Blessed Virgin Mary, decided to remove them from office. However, the guardian of the Monastery of Saint Anthony, upon being informed of the confratres' deliberation, informed them: "This our religious family has the right to perform certain functions in the church of the Most Holy Annunciation on designated days within the year; and we do not wish to communicate this right in any way; rather, we will ensure that these functions are performed with the greatest solemnity, for the glory of God." Consistent with this, in the coming days of the year, in which certain sacred functions are performed in that church...

[*Latin ed. p. 344*]

344 From those matters which the guardian alleged, the parish priest and other brothers of St. Anthony approached the small church of B. Mary to perform [certain duties]. However, the confreres forbade this; and thus, more serious disputes arose, in which, as the brothers recount, political authority was invoked by the brothers, and this occurred without a little scandal among the faithful. Then, the matter was brought before the archiepiscopal court by the guardian and the parish priest of St. Anthony, in which, after both sides had presented their rights and allegations, the Vicar General, after several attentive days, on January 20, 1889, decreed: that the Reverend Superior of the Ministers of Reform from Viareggio, and the parish priest of St. Anthony of Padua in Viareggio, should exercise the sacred functions in the Church of the Annunciation in Viareggio on the feast of SS. Peter and Paul, on the feast of the Annunciation, on the last three days of the bacchanalia, and to administer absolutions on the second of November of each year, as they had done until then; and therefore, we declare that the Reverend Fathers are to be restored to the quasi-possession of exercising said sacred functions on those days, and the Sodalitas is to be held to not disturbing this quasi-possession. Subsequently, the officials of the Confraternity appealed this decision to the Supreme Sacred Congregation. Synopsis of the Dispute. DEFENSE OF THE SODALITY. Here, the members began to challenge the aforementioned document taken from the book of St. Visitation of the year 1726, upon which the judgment seemed to be based, and they proclaimed that book to be adulterine, and they requested that the entire book be sent to Rome. The Archbishop, who had already defended his decree for some time, added the following in a further letter: "By letters from E. T. Rma dated October 28th, I have read and noted

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the new petition presented on behalf of the Sodalitas of B. Mary, greeted by the Angel, by the officials of this Court, who, together with me, are astonished at how the orator dared to seek the same court before the S. C., and this all the more because he does not ignore..."

[*Latin ed. p. 345*]

LUGANA 345: It is possible that a vow exists, of which an authentic copy, prepared by a skilled man who was sent by the Sodalitas to examine the books in this Curia in which the acts of the Archbishop Guinigi's Visitation are described, is attached here. Furthermore, I am prepared to obey the orders of this Sacred Congregation, and I dare to ask that, if the aforementioned books are to be sent to the Sacred Congregation, the expenses be borne by the advocate. These expenses will not be light, because the necessary security requires that a specific person be appointed to travel to Rome, to take these same books with them, and after examination, to return them to this Archive.

The members of the confraternity of the Blessed Virgin Mary, greeted by the Angel, although they appear to be refraining from the offered petition to have the books of the Archbishop Guinigi's Visitation examined by the Sacred Congregation, nevertheless vehemently deny the authenticity of the documents, presenting to this judgment the testimony of a certain public notary, as well as others who, together with the chaplain of the sodality, examined the book. They add a declaration from a certain religious man of the Congregation of the Mother of God. Regarding the expert report, of which the Archbishop spoke in his letters, they maintain that it should be discredited, asserting that the author of that report is not at all versed in paleography, and furthermore, that he has publicly declared that document to be adulterous before witnesses. Moreover, the very words of the document reveal its falsity, as they refer to tables of a public notary, which are not indicated, and they assert rights that seem to be excluded from the concession granted in the year 1667 by the governors of the Republic. However, given the small amount of the document in question, all the characteristics of authenticity are evident; nevertheless, it should not be inferred, as the General Vicar decided, that the Brothers Minor of St. Anthony are in quasi-possession of performing several sacred functions in the church of the Annunciation. Indeed, there is only mention of the feast of St. Peter, and therefore, the provision of the law could be adapted, which prohibits the extension of observance from case to case, from place to place, and from person to person, according to what the Doctors unanimously teach, among whom are De Luci, *De Benef.*, disc. 29, n. 23; Pitonius, *Discept. Eccl.*, discept. 59, n. 20, etc.

[*Latin ed. p. 346*]

346 LUGANA. Furthermore, those opposing the document which as-

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serts the parochial right of the Brothers Minor present certain excerpts from the work of the canon Guerra, entitled "Pope Pius VII in Viareggio in 1809 and in 1815," published in the year 1877, in which the following is stated: "This church was dedicated to St. Peter; and the Republic of Lucensis maintained a priest there for the spiritual assistance of the military garrison and the citizens." However, they contend that the parochial jurisdiction belonged to the parish church of Elice. They argue that the church of the Annunciation is included within the parochial jurisdiction of "Pieve a Elice," demonstrating that, until March 9, 1661, all who reached the threshold of life in the town of Viareggio received the sacrament of regeneration in this last parish and in another, commonly called Corsanico. They also maintain that a more valid argument can be derived from the fact that, for a long period of years, the Brothers of St. Anthony habitually performed all the sacred functions, including those which are now in dispute, in the church of the Blessed Virgin Mary, greeted by the Angel. They explain this by stating that, at that time, only Franciscan priests were present in the town of Viareggio, and therefore the members, so that they would not be deprived of the sacraments, were necessarily obliged to turn to them. Moreover, they argue that the fact that the sacred functions were performed in the aforementioned temple should be attributed not to the parochial right, but to the duties of a chaplain. Above all, they recall that, contrary to what is asserted in the document taken from the book of Visitations, the Brothers of St. Anthony received compensation for performing the aforementioned functions, as can be read in the laws of the confraternity, printed in 1833, cited, chapter XXII, number 140. These very passages are repeated in subsequent laws and are confirmed by several expressions, which are found either in the same laws or in the statutes for the chaplain, of the pious confraternity, confirmed by the Archbishop in 1883. Furthermore, they believe that attention should be paid to the words used by both the members and the Brothers themselves in several letters, from which they claim that the aforementioned sacred functions were performed by the Brothers Minor, insofar as they were chaplains of the confraternity.

[*Latin ed. p. 347*]

LUGANA 347, acts. This is principally derived from the letter of the guardian of the monastery of St. Anthony, dated August 23, 1882, addressed to the prior of the sodality, in which, considering the increasing sacred functions of the confraternity, and also the lack of religious brothers, he stated: "We are compelled to take the resolution of offering the services of the Sodality, performing only those duties which have long been provided. These are the burdens of the monastery or of a religious brother functioning therein, and only these can be adequately fulfilled by us." Indeed, since the sacred ministrations, and especially those concerning which the opinion of Lugana is concerned, have been recognized by the

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brothers themselves as obligations annexed to the office of chaplain, it remains only to say that the alleged claim is entirely unfounded. For we are dealing with acts of a voluntary nature undertaken by the confraternity, in which it is not possible to establish a prescription, as Vesembacius states in Panel, book 41, title 3, number 10; Bartolus in I. with the well-known Code concerning prescription, 30 years. The abbot in cap. Quoniam § ult. as in a dispute, etc. Therefore, it would not seem unreasonable to conclude that if the religious brothers were admitted by the confraternity, out of generosity, to perform these sacred functions, this should in no way be construed as a detriment to the pious sodality or a diminution of its rights, since, according to the teaching of Ulpian I. 2 ff. De Precario, no right can arise against those who grant, from continuous possession. Finally, even in the flawed hypothesis that some right might belong to the parish priest and the brothers of St. Anthony, the members of the sodality maintain that this right is merely lost through the renunciation of those same brothers. They recall that in the year 1857, when the pious sodality wished to designate a certain chaplain and to add new duties to him, the guardian who then governed the monastery, on behalf of the community, relinquished the office of chaplain, and furthermore declared that the religious family would send a messenger to the Church of the Annunciation, to inform it of the rights which belong to it, or which may belong to it; and a messenger is sent to anyone who has hitherto performed an office or ministry for the aforementioned Church and So-

[*Latin ed. p. 348*]

348 LUGANA, concerning nullification. Indeed, from the decision of the Rota, number 777, paragraphs 4 and 5, part 18, volume 2, recently published, it is stated that, once a renunciation has been declared, and something has ceased to exist in the order of nature, it can no longer be restored to the matter from which it was renounced. However, the words with which the renunciation was made are so absolute and general that they seem to exclude any restriction. DEFENSE OF THE FRANCISCAN FATHERS. Another point, concerning the authenticity of the document taken from the book of the Most Reverend Archbishop Guinigi, relates to the words of the Archpriest previously mentioned, from which it is inferred that an expert, who had just been rejected by the brethren, was chosen and sent by them to examine the books. From this, the presumption arises that everything that these men have now gathered against the expert proceeds from the fact that he did not express a favorable opinion to them. However, it does not seem to be the case that this relationship should be given more credence than the statements and declarations of others, not only because the expert cannot be refused by the very party that chose him, as Tradition teaches, according to Cardinal De Luca, *De Iudiciis*, section 33, paragraph 24, but especially because the brethren rejected the sending

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of the book to Rome at their own expense. After this, since the brethren failed to prove the falsity of the assertion, it seems appropriate to apply the provision of the law in chapter 4 of the instrument concerning faith: "If he does not come, or does not send a sufficient response, impose perpetual silence upon him, and further argue with him no longer. Meanwhile, we do not wish these privileges to waver, but we command that the sentence which has been pronounced be observed inviolably." Indeed, it is true that in the aforementioned document of the Most Reverend Archbishop, only the intervention of the Franciscan friars in the sermon on the feast of Saint Peter is mentioned; but since their parochial right is asserted there without ambiguity, and since, furthermore, it appears as if they possess the right even for other sacred functions, the Vicar General also attributed this to the same cause, citing the authority of the Holy Rota, *Rec.*, page II, decision 60, number 13. The Archbishop, however, believes that the existence of this parochial right can be deduced from the history of the temple, as stated in his letter to the Sacred Congregation of the Council.

[*Latin ed. p. 349*]

LUCANA 349 Therefore, since the parochial rights of the religious community of St. Anthony are established over the church of the Most Holy Virgin greeted by the Angel, it would seem that the Franciscan brothers were present there on those days exercising their parochial rights, performing sacred ministrations, and not merely as chaplains of the confraternity. For it is well known that a parish priest, in matters concerning the exercise of sacred functions, has a fundamental intention of right, not only within the parochial church, but also within the entire territory of the parish. *Cap. Concerning Chapels of Monks, c. 1, 4. Concerning burials. Barbosa, De Officiis Parochi, part 1, c. 12, n. 1 and following. Rota Decis. 124 a, no. 1, decision 214, n. 6 and 7, part 12, and decision 231, n. 2, par. 13, decision 225, no. 1, par. 19.* Consequently, all that was presented to the contrary, which seemed to indicate the dependence of the brothers on the confraternity, should be restricted to the office of a chaplain. And since a secular and peaceful possession, free from dispute, appears to exist from the confession of the members themselves, it follows that they should be maintained in this quasi-possession, provided a legitimate title exists. Moreover, as the Vicar General observed, in a case of spoliation, a "coloratus titulus" (a title of apparent right) would suffice to restore the property to the one who was spoliated. Therefore, it seems futile for the members to appeal to the instrument of October 5, 1667, by which the authorities of the Republic of Lucensis granted the use of the church to them. For, although the question of whether the Republic of Lucensis actually had a right to the aforementioned church remains, it is certain that, according to the prescriptions of both laws, the rights of the Franciscan brothers in that temple could not be harmed. Therefore, the words "the confratres may freely use the aforemen-

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tioned church" should be understood in such a way that no prejudice is caused to a third party by this acquired right, since it is a common understanding that a matter transacted between others cannot benefit or harm a third party. Furthermore, it is equally futile for the reformed brothers to object to the payment of a sum of money, even for the disputed sacred functions. Since this generosity of the pious members was something to which they could not object, and with which they perhaps wished to repay a commendable service rendered to the church. And this is also evident from the fact that...

[*Latin ed. p. 350*]

350 In Lugana, ut in libro Visitationis Sanctae non incongruenter adducitur, peritis verbis: "absque emolumento ex obligatione Sodalitii;" ex quibus, ideo, obligatio remunerationis videtur excludi. Denique, renuntiatio quae emissa perhibetur anno 1857 a guardiano coenobii Sancti Antonii quoad sacras functiones aliaque parochialia iura, neque eam confraternitatem modo iuvare censent. Ut enim scribit Archiepiscopus: "renuntiatio ad quam appellant recurrentes, nullimode respicit quaestionem praesentem, sed respicit tantum nuntium missum officio cappellani Ecclesiae SSmae Annuntiationis, quod explebat religiosus ad id deputatus per Coenobii superiorem. Religiosa enim familia, ultra functiones de quibus loquitur sententia, dictis diebus peragendas, solebat etiam destinare religiosum qui in eadem Ecclesia toto anno fungeretur cappellani munere. Huic officio Patres nuntium miserunt, ob religiosorum numerum imminutum, et forsan aliis de causis: sed etiam post nuntium missum anno 1859, explevit praefatas functiones eisdem dictis diebus usque ad annum 1887, quo exturbari coepit ius eiusdem familiae religiosae. Porro, compertum est in iure renunciationem esse stricte interpretandam; quod et in themate valere dicendum est, licet generalibus verbis fuerit expressa. Siquidem, ut docet Card. de Luca, tom. 1, Dec. Siciliae, n. 120, "renuntiatio quantumvis generalis et amplissima restringitur ad suam causam." Cum igitur tunc de obeundo munere cappellani inter priorem confraternitatis et fratres ageretur, guardiani verba ultra rem, de qua tractatus instituti fuerant, extendi non debent. His praeterea addi posset agi in casu de renunciatione, quam nec coenobii superior, neque religiosa familia valide emisisset, utpote quae ab eorum potestate minime penderet; ac proinde dato et non concesso quod reapse existeret, nullitate laboraret, iuxta Regulam LXIV iuris in 6: "Quae contra ius fiunt debent utique pro infectis haberi." Quibus expositis, propositum fuit enodandum.

[*Latin ed. p. 351*]

351 LUCANA. Whether the judgment of the ecclesiastical court of Lucania should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation, having considered the matter on December

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1, 1891, decided to respond: "The judgment should be confirmed, and furthermore." FROM WHICH THE FOLLOWING ARE DERIVED. I. Since the asserted falsehood has not been proven, the provision of law should be applied: "But if he does not come, nor send a sufficient answer, let perpetual silence be imposed upon him, and let him be further argued against." II. The Brothers having not proven the asserted falsehood derived from the document, the aforementioned document, to which the judgment of the episcopal court is attached, remains in its force and authenticity. PISA AUREA. CONCERNING THE DECIMAS AND THE ERECTION OF THE BAPTISMAL FOUNTAIN. On August 29, 1891. Session 25, chapter 12, concerning Reforms. SUMMARY OF THE FACTS. There exists in Pisa an ancient parochial church, dedicated to Saint Cassian, bishop and martyr, to whose rector the title of "prior" is customarily conferred. To this church, formerly, a larger flock was entrusted, and its jurisdiction extended beyond the city walls for several miles. However, since the care of souls could not be exercised with sufficient diligence in so vast a parish, due to the distance of the places or the difficulty of the terrain, Jerome Ragazzoni, Augustinian Bishop and Apostolic Visitor of the Council of Trent, demanding the execution of decrees, in the year 1574, erected another parochial church in the more distant village of Boncio, and also decreed that, "when the occasion arises, the Most Reverend Bishop of Pisa..."

[*Latin ed. p. 352*]

352 PISAUREN. He sought to establish a new parish outside the city, for the care and provision of souls who reside in the surrounding areas and are under the care of St. Cassian. > Since the inhabitants of the village, commonly called Roncaglia, had often presented petitions to Bishop Robert Saxatello, requesting that he provide for the souls of their community, especially because, particularly during the winter months, the parishioners, and especially the elderly, children, and women, could scarcely reach the parish church without great difficulty, and often, especially at night, access was entirely closed, particularly for the baptism of infants, and for the spiritual comfort and sustenance of the sick, and access was almost impossible when the city gates were closed, and the villagers were denied the authority to open them; and in order to facilitate the execution of their request, they spontaneously offered to build a new church in their village at their own expense; Bishop Saxatello, in the year 1578, granted the petitioners the permission to build the new church, which he subsequently established as a new parish, and ordered the construction of a cemetery, a baptismal font, a bell tower, and the placement of bells in that church; furthermore, in addition to the people of the village of Boncii, for whom provision was already made in another way by the Reverend Visitor, and quite conveniently, all and each of those residing outside the city, and who are currently under

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the care and jurisdiction of the church and rector of St. Cassian, are placed under the care of this new church, granting to it, and to its rector, all manner of power and jurisdiction, except for the right to tithe and collect the fruits from the established properties, which are currently possessed and held by the aforementioned church and rector of St. Cassian. For the endowment of this church, with the consent and will of the Reverend Vincent Marini, the modern rector of the church of St. Cassian, ten sextars of grain are given and assigned perpetually for each year, to be collected and held according to the common public measure, by the rector of this new parish, from the tithes belonging to the church and rector of St. Cassian, from the properties and persons of the aforementioned new church's neighbors, or to be received from the hand of the rector who, at the time, will be of St. Cassian. And because the Bishop is aware that the church of St. Cassian is...

[*Latin ed. p. 353*]

PESARO. The territory abounded in resources and revenues; therefore, after the death of the present rector of St. Cassian, it was assigned to the new church and its rector and minister, in addition to the tithes belonging to the church and the rector of St. Cassian, five more *sextarii* of grain, bringing the total to fifteen *sextarii*. All things were carried out according to this decree of the Bishop, except for the construction of the baptismal font, which, although permitted there, was never actually completed for an unknown reason. Meanwhile, the population of the new parish began to increase, and therefore, with the increase in inhabitants, more forests and uncultivated lands were converted to arable land over time. Consequently, it became apparent that one rector was insufficient to administer the Sacraments to the faithful and to celebrate the divine worship; furthermore, regarding the tithes of the lands, in the year 1732, disputes arose between the parish priest of Roncaglia, Anthony Pagini, and the prior of St. Cassian. Regarding this matter, some meetings had been held in the years 1692, 1716, and finally 1723, but they did not seriously contribute to achieving full agreement. Furthermore, in the year 1732, Anthony Pagini, the parish priest of Roncaglia, offered prayers to the highest authority, requesting that, according to chapters *Cum contingat* and *Cum statuimus* 26, he be granted the power to collect the tithes of the new lands, so that he could also add a coadjutor priest to assist him in his pastoral duties, especially since the income of the prior of St. Cassian exceeded 400 *scudi*. Then, with the authorization granted by the Rescript of the Holy See for Bishops and Regular Canons dated July 1, 1735, and with the addition of an executive decree from the Bishop of Pesaro, Philip Spada, negotiations began between the aforementioned parish priest Pagini and the prior of St. Cassian, John Gerunzi. And with the permission of the Apostolic See, a certain benefice was permanently united to the parish of Roncaglia under the title of St. Mary of the Imperial [or of the Workshops], with the intention

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that a chaplain or curate be established in the aforementioned Church of St. Mary, removable at the will of the Ordinary for the time being: *Acta Curato*, Volume XXIV, page COLXXXII, line 23.

[*Latin ed. p. 354*]

354. PISAUREN. To him was also assigned a certain income pertaining to the parish of Roncalea. The parish priest of St. Cassian decided to give the parish priest of Roncalea also five sextarii of wheat, in addition to fifteen others, and candles each year on the Feast of the Purification to each family that paid tithes to the mother church of St. Cassian from the populations of Roncalea and Boncii. Furthermore, the parish priest of Pagini, for himself and his people, promised not to request any other quantity of wheat beyond that mentioned; also, no land was to be taken. However, for the good of souls, and because of frequent disputes between the parish priest of Roncalea and the chaplain of St. Mary dei f Imperiale, an independent parish was established in the latter church in the year 1804, with an annual pension of 65 scutarii assigned to the priory church of St. Cassian, which was then vacant; of these, 40 were to be for the benefit of the rector of Roncalea, while the remaining ones were to be given to the new parish priest of St. Mary. Afterwards, things appeared to proceed peacefully until recently, when the parish priest of Roncalea, John Baptist Franca, presented a petition to the Most Reverend Chapter, requesting that all tithes, both land tithes and those pertaining to the sacraments, be assigned to him in his own parish, and that he be granted the faculty of erecting a baptismal font in the parish church. He stated that, concerning the first point, it was unjust for the parish priest of St. Cassian to collect tithes in his own parish, while the benefice of St. Barnabas, the seminary of Pisauren, and the benefice of Boncii, each received their share in a designated part of his parish.

Disputatio Synoptica. DEFENSE OF THE PARISH PRIEST OF RONCALEA. The patron of the parish priest Franca addresses his petition, particularly mentioning the nature and division of land tithes according to Engel, book 3, numbers 1, 2, 3, and *L Sylva* 30 § Novalis ff. de V. S. d. cap. quid per noval.; and alleging the words of the decree of the year 1578, he argues that the parish of Roncalea was entirely autonomous and independent from the church of St. Cassian. There...

[*Latin ed. p. 355*]

PISAUREN. There are 355 rural parishioners who are said to have been separated, dismembered, and removed from all rights and jurisdiction of the prior of Saint Cassian, and to the new parish priest are assigned all powers, authority, exercise, care, precedence, jurisdiction, duties, and honors, without any distinction. Given this, it follows that the new parish priest must exercise all rights over his territory, among which is the right to collect tithes from the land, which are due to the parish priest within whose

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district the land is located, or within whose boundaries the animals are grazed; from which the tithes are given. Chapter 4, On Tithes, Book III, Decretum, title 30, chapters 13 and 16. The reason for this legal provision is explained, according to the author, from chapter 15 of the same title; as Engel explains in the cited passage, number 6: "That land tithes must be paid to the parish priest within whose parish the land is located, so that the boundaries of the parishes are not confused and many disputes do not arise." And he believes that this is confirmed because the parish of Saint Cassian, since it is entirely lacking in the right of matriculation over the parish of Roncaglia, cannot in any way claim it. However, he notes that no mention is made of such matriculation in the decree of dismemberment and erection of the new parish, from which, on the contrary, it would rather be possible to infer the opposite. Indeed, it was stipulated in that decree that a baptismal font should be erected in the new parish, and therefore any such matriculation was removed, since it is clearly proven that baptism is received in the original church, which is to be retained as the mother, to which all must have access. Furthermore, the right to collect land tithes belongs to the parish priest of Roncaglia, the defender argues, because he has been substituted for the parish priest of the church of Saint Cassian, as is evident from the decree of erection. For in that decree, all parochial duties were attributed to him, and he must also bear the corresponding benefits; for it would be unreasonable, the author says, for one to bear the burdens and the other to collect the fruits and the rewards of the labors that we support. But furthermore, he strives to prove this from the principle of congruity. He argues that the parish priest of Roncaglia does not receive the sum of...

[*Latin ed. p. 356*]

356 PISAUREN. It is stated that there are one hundred parishes in Cento, whereas the superiors of the churches in Trent, in Session 24, chapter 13, concerning reforms, desired to preserve [something]. Indeed, it is stated in the records that the annual revenue of the parish reaches 652.08 livres, and that these are entirely consumed by burdens which oppress the parish church itself, so that its pastor is obligated to pay a sum of 1010.39 livres annually. Therefore, the author, after enumerating several other expenses, concludes that the pastor must contract a debt of 8000 livres annually. Furthermore, he states that the emoluments constitute a sum of barely thirty livres, and are therefore minimal. He considers it absurd that the Bishop, while establishing a new parish, reserved for the church of St. Cassian and its pastor the right to tithe and collect fruits from the fixed properties which the aforementioned church and the pastor of St. Cassian now possess. For such a reservation, he believes, is contrary to common law, and therefore could not have been introduced by the Bishop. He attempts to prove this by referring to chapters 15 and 16 concerning tithes, in which the opposite

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is stipulated. Furthermore, he calls the aforementioned reservation manifestly contradictory, since it is not consistent with the rights which the Bishop granted to the new parish. He himself does not see how a reservation of tithes can be reconciled with all power, authority, exercise, rights, and honors. Regarding prescription, he recalls from Mascardi that it cannot have place "where common law resists," because then "never is a title presumed, from long-standing performance, or from the course of a long time; for example, if a prelate should prove that he has for a long time received tithes in another's parish, from which common law resists." *De prob.*, vol. 3, council 1371, number 108. In the present case, since the reservation is held to be established contrary to common law, and the prescription of the pastor cannot be established, the entire machinery of prescription can be considered to collapse, however memorable it may be. Lotterius, *De re benef.*, Hh 1, question 24, numbers 159, 160. U r saya, *Discourses*, 2, part C, discourse 5, number 115.

[*Latin ed. p. 357*]

PISAUREN. 357 Concerning the right to collect personal or sacramental tithes, it is declared that this belongs to the parish priest, as stated in chapter 20 of *Ad Apostolica*, concerning tithes, where it is decreed: "It is fitting that personal tithes be rendered to the church by those from whom ecclesiastical sacraments are received." Thus, Engel teaches: "Personal tithes are to be paid to the parish priest who administers the sacraments." *Lib. 3 tit. 30 n. 6*. Huth, *lib. 3 tit. 30 n. 2*. The aforementioned author believes that this legal provision is not binding, according to the aforementioned statements, and declares the reservation attached to it to be invalid, and therefore, contrary to common law, and consequently, of no value. After this, addressing the issue of new properties, he presents several testimonies, which he considers worthy of all belief, in which it is asserted that, in recent times, approximately one-third of the territory of the parish of Roncaglia has been constituted by new properties. With these premises, the patron argues that tithes on these new properties should not be collected by the parish priest, citing, as further authority, Engel, *loc. cit.*, who maintains that neither can he to whom the right to collect tithes has been granted by the Supreme Prince demand tithes on new properties. For he says: "<Privileges concerning the restriction of the rights of a third are to be interpreted strictly, c. 1 of V. S.; also, that privileges do not extend to future times if they did not exist at the time of the concession, c. fin. de rese, and partly in chapter 2 concerning tithes, n. 6, where it is clearly implied that the right to collect tithes on new properties must be granted by a special privilege, and is not contained in the right to collect old tithes>." He states that this doctrine is consistent with the canonical laws found in chapter 13 and chapter 29 concerning tithes, and also with the practice and custom prevailing in that region, as he believes is demonstrated by a certain

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testimony from the parish priest of Monteluro. Furthermore, in the decree of division and erection of the parish, the patron considers the following words to be noteworthy, in which the care of souls is granted to the new parish priest, "along with all rights, except the right to collect tithes and the fruits from the established properties which the aforementioned church and the rector of St. Cassian possess and hold." And to him is assigned "all revenues, certain and uncertain, which in any way pertain to or will pertain to..."

[*Latin ed. p. 358*]

358. The briefs of Aurem can pertain to the church and rector of St. Cassian in the newly established parish, and the right of tithes pertaining to the priorate of St. Cassian must remain inviolate and intact in the same manner in which it currently exists and pertains. Indeed, from these words it is evident that the rights of the priorate of St. Cassian concerning tithes cannot be extended to the new parish, but rather must be restricted to the lands that are already cultivated, and even more so, because the Bishop added that he was not unaware that the priorate church abounds in opulent revenues and benefits. Furthermore, he considers that an increase [of the stipend] granted by the parish priest in the year 1735, after the Bishop published the document concerning the establishment of the new parish, does not constitute an impediment. Indeed, he believes that the transaction of that same year does not obstruct, because through it the parish priest's stipend was increased to twenty-six measures of wheat, the value of which can reach sixty scudi; which sum does not constitute a sufficient provision. However, since no transaction concerning tithes is demanded by the priorate of St. Cassian, the patron believes that this is the proper course for resolving the matter. Then, proceeding to the matter of the erection of a baptismal font, he seeks to corroborate his argument from the very notion of the parish and from the office of the parish priest. He recalls that the administration of the sacraments, and particularly Baptism, pertains to the parish priest, according to Concilium Tridentinum, Session 24, chapter 13, De reform. Ferraris, volume 1, page 4, number 4. Barbosa, De officio et pot. parochi, page 2, chapter 16, number 1 and following. – There, it is stated: "Everyone in his own place, to whom a church belongs, must be baptized, because one priest does not have the right to usurp the territory, the people, and the rights of another parish priest." Hence, the Doctors unanimously teach that a baptismal font must be regularly erected in all parochial churches. Barbosa, De paroch., page 2, chapter 18, number 7; Ursaya, volume 9, page 32 and 33; Ferraris, voce Baptismus, etc. Furthermore, it is reported that several councils have put this doctrine into practice, having ordered that each parochial church construct its own baptistery. Nor has the Sacred Rota tribunal decreed otherwise in several resolutions, and especially in the judgment of the Roman court concerning baptism, January 12, 1752,

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number 2, concerning Samniato, where it is stated:

[*Latin ed. p. 359*]

PISAUREN. 359 "Indeed, this kind of ecclesiastical discipline possessed the highest degree of equity and appropriateness, because it is most fitting that all parish churches should have a baptismal font, so that each pastor may administer the sacraments. Furthermore, the Sacred Congregation of the Council always demonstrated a desire for the erection of baptismal fonts, whenever it was not prohibited by a true cause of justice: Hence, on June 15, 1624, it was ordered to be written to Urbinate: 'The Holy Office decrees that in all parish churches there should be a baptismal font.' To this correspond Massilien, January 7, 1640; Fulginate, June 22, 1720; Guardien, May 21, 1735; Viterbien, May 19, 1877; Trivento, the erection of the baptismal font on May 8, 1886, and six hundred other cases (1). Moreover, it is not only fitting, but also a true and just reason for the erection of a baptismal font in the parish church of Roncaglia. For, considering the distance and the roughness of the roads, as testified by the municipal authority, infants, especially during the winter months, cannot be brought to the city without great difficulty to receive Baptism, as the physician of that place asserts. This is also confirmed by the midwife and the fathers of families of the place, who, for the same reasons, advocate for the erection of a baptismal font. Finally, the patron notes, in the division of the parish, specifically according to the aforementioned decree, that the erection of the font had been permitted; therefore, it appears most just that what had been established from the beginning should now be brought to completion. DEFENSE OF OTHER POINTS. However, other matters are not to be overlooked. And first, concerning the tithes from the land, which are collected in the place commonly called S. Lorenzo by the diocesan seminary, the rector prays that the Sacred Congregation of the Council may consider the most pitiable condition of the aforementioned seminarians, because they are burdened with various obligations. (1) Viterbien, the report on the baptismal font is found in Vol. XL, 232; Trivento, however, in Vol. XVII, 543.

[*Latin ed. p. 360*]

360 PISAUREN. The Rector, the Bishop stated, has presented his reasons regarding the benefice of Saint Michael of BonctOj, which the Rector of the Seminary of Clerics has explained; indeed, he judges the condition of his church to be better, because he has the obligation, according to the law of its institution, to exercise the care of souls in aid of the parish priest of the place, Firenzuola. Furthermore, it must be noted, with regard to the parish of Saint Cassiam, according to Cardinal De Luca, *De Decimis*, book 12, number 13, that a church is properly called a "mother" in comparison to another, as a daughter, when two or more parishes are formed from one, because the first is truly the mother of the others, since they are formed

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from a part of its territory and people. Nor does it matter that newly established parishes are granted full autonomy and jurisdiction with all rights and privileges. For the nature of maternity does not imply dependence on another church, but rather excludes it. < Indeed, in the law of parishes, all are equal with all independence; ... where other churches are dependent on one with all subordination, then although, for common usage of speaking, the terms "mother" and "daughter" are also used, it is a misuse of language. > De Luca, *Missae*, book 1, number 31. Indeed, with these points established as the basis, it seems that the argument against the maternity of the church of Saint Cassiam cannot be drawn from the decree of its erection. For if maternity arises not from the name, but from the fact of division, to which, moreover, the reservation of tithes and the practice regarding the administration of baptism are fully attached. Therefore, such maternity has never been called into question in the past, and has been openly stated on several occasions in public documents and in the very instrument of the year 1735. Therefore, since the church of Saint Cassiam is truly the mother of the parish of Roncaglia, it follows that the reservation of tithes made in its favor by Bishop Saxatello cannot only not be declared contrary to the law, but rather fully conforms to the provisions of canon law. It has been determined, with regard to the collection of tithes, that the mother church has the right to...

[*Latin ed. p. 361*]

PESARO. 361, both in law, as is demonstrated by the decisions of the Rota and the Sacred Congregation of Rites, in *De Luca, De decimis*, chapter 12, paragraphs 4 and following; chapter 10, paragraph 9; chapter 10, paragraph 12; chapter n. 31 – there – « because, for the church to be a true parish, and to possess in its entirety the rights of a parish, and yet the mother church to retain the right of tithes in whole or in part. » The words by which the right of tithes was reserved to the prior of St. Cassian are very clear, and from these it is evident that both the tithes pertaining to the presbytery and the tithes pertaining to the sacraments are included. Nor does any limitation appear to have been introduced regarding the new territories by that formula of speech « in the manner in which it is presently and pertains. » Indeed, since at that time the right of tithes over the entire territory belonged to the parish priest of St. Cassian, it seems permissible to argue that this right was also fully preserved for him. But what is said to the contrary, namely that the tithes of the new territories are not included, must be referred to the privilege or to the exemption, and are not at all applicable to the case of the mother church. But if anything were still doubtful in this matter, it would certainly be resolved by the observance of more than a hundred years, and by the agreement entered into in the year 1735 by the rectors of both churches. For it is certain that, from the dismemberment of the parish until now, all tithes, without distinction, have been constantly received by

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the prior of St. Cassian, and that after the year 1735, there has been no interruption of this peaceful possession. Moreover, the agreement, entered into with all due solemnities by the contracting parties and their successors in office, expressly binds them. Indeed, on July 1, 1734, the Sacred Congregation of Rites and the Sacred Congregation of Bishops ordered the Bishop to « if the facts narrated are true, and after having ascertained that it will be for the benefit of the church, approve and confirm the aforementioned agreement with the terms and conditions expressed above, according to his judgment and conscience. » And therefore, the Bishop of Pesaro, a few days later, after having heard the fiscal promoter, granted the faculty of entering into the agreement under the same formulas. Indeed, the force of the agreement is evident from Title 16 of the Code of Agreements, where we read « cau-

[*Latin ed. p. 362*]

362. PISAUREN. Disputes and lawsuits concluded through legitimate agreements should not be revived by imperial decrees: "and according to canon law, chapter II concerning Transacts." We decree that if an agreement has been reached between you and a church official regarding tithes, with the consent of the Bishop or Archbishop, that agreement shall remain valid and unassailable. Therefore, the doctors unanimously teach that a transaction has the legal nature of a concluded lawsuit and a matter that has been judged, which is generally considered to be true. Furthermore, in the case in question, the requirements for a valid transaction, as established by law, were not lacking, as has been explained above. Moreover, whatever the current parish priest and his patron may claim, it is certain that an agreement was made after a dispute initiated by the parish priest Pagini, and not based on any certain legal right. Therefore, all doubt regarding the validity of that agreement must be removed, especially since it was presented as a model of agreement to the Sacred Congregation, and the decree was sent to the Bishop as a mixed executor, along with those clauses that require some judgment and investigation to be carried out by the Ordinary. Furthermore, the successors of the parties who entered into the agreement are bound by the agreement, at least due to the authority of the Sacred Congregation, which is certain in this case. Moreover, even if some defect were admitted, it is not permissible to challenge the agreement after such a long period of time; Antonelli, *De tempor. legal.*, chapter 100, paragraph 1; Jordanus, *Elucubr. divers.*, Book 1, title 24, concerning prescription, paragraph 443. It is truly erroneous for the parish priest of Franca to appeal to a supposed defect in the prior of S. Cassiano. For, in addition to twenty-six sextaries of grain, he receives an annual sum of 40 scudi in counted money; and if the other certain revenues are added, a total of 172 scudi is obtained, which is undoubtedly a sum of the *tridentina* value that is more than adequate. As for the construction of the baptismal font, it must be stated that it does

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not pertain to the essence of the parish, as taught by Gonzalez, *ad reg. 8 Cancel.*; De Luca, *De parochis*, discourse 37, paragraph 1; Barbosa, *De iure eccles.*, book 2, chapter 1, paragraph 23; and even the Council of Trent itself seems to indicate this in Session 21.

[*Latin ed. p. 363*]

PISAUREN. Chapter 363, paragraph 4. Concerning reforms, we distinguish between parochial and baptismal churches. However, the practice of the Holy See is that, where baptismal churches exist, it is not usually permitted to erect a font in the parochial church, so that "a distinction may be made between the registers of churches and other parishes," as is read in Rieti, in the "Rights of Parishes," January 14, 1860, §. This, and many other resolutions, especially in Guar, June 13, 1654; in Boiano, May 24, 1732; in Vercelli, November 18, 1747; in Camerino, February 10, 1748, etc. It does not seem valid to object that in the decree of division, the right to erect a baptismal font was included among the rights attributed to the new parish. Indeed, if, from the facts and the subsequent observance, it could be shown that there were reasons why those things that had been decreed were not brought to effect, then after the lapse of three centuries, the prescription could be invoked, which presupposes a better title in the world, and which establishes a privilege and a burdensome contract, according to Text. in I. without written institution, title concerning law, and also chapter "Concerning certain things," 26, "On the words of the sign." Finally, the reasons for which, at times, the Holy See has derogated from the rights of matriculation, by granting the erection of a baptismal font, could hardly be said to be relevant to the matter. On the contrary, those things which, without the approval of the Bishop, the parish priest of Franca brought forth, are contrary to what was presented by the former parish priest of Saint Cassian, and therefore, at least until the contrary is clearly demonstrated, he should be considered to be in quasi-possession of his own rights. With these things stated, the following questions are to be considered: I. Does the parish priest of Roncaglia have the right to collect tithes, especially new tithes, in this case? II. Is the place suitable for the erection of a baptismal font in the parochial church of the same place, Roncaglia, in this case?

[*Latin ed. p. 364*]

364 PISA.UREN. The Sacred Congregation, after considering the matter on August 29, 1891, decided to respond as follows: RESOLUTION. Regarding point I, Negative. Regarding point II, Affirmative. From which the following may be gathered: I. The term "matrix," relating to a daughter church or churches, should be understood as referring to that parish church from whose territory another or several parishes are constituted. II. Matricity does not imply any dependence of the daughter church or churches; rather, it entirely excludes such dependence; because all newly

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erected churches, with full autonomy and jurisdiction, are equal in law to the original parish; so that it is improperly said when the terms "matrix" or "daughter" are used, when the churches are dependent on one another in every way. III. Hence, it is easily understood that matricity is not merely a name, but arises from the fact of the dismemberment of a church, whereby another or several parishes are constituted from part of its territory and people. IV. However, canon law is consistent with the reservation of the right to collect tithes by the matrix church over part or the entire territory of the newly established parish, which is entirely independent of the original church with regard to parochial law. V. It can happen that a daughter church is a true parish, and in all respects has parochial rights, and yet the matrix church retains the right to collect tithes over the entire territory or part of the newly established parish. VI. The causes and questions regarding tithes, once legitimately settled, cannot be revived; and if an agreement has been reached between the parties with the consent of the Ordinary, it remains valid and firm; and it is equivalent to a dispute that has been concluded and a matter that has been judged by unanimous consent of the experts. VII. In this matter, it is established that an agreement has been made between the parties; a copy of which agreement was presented to the Sacred Congregation, along with a letter and decree from the Bishop, and was sent back to the Bishop for execution; therefore, neither the authority of the Sacred Congregation nor the length of time elapsed can allow this agreement to be challenged.

[*Latin ed. p. 365*]

PISAUREN. August 365. Concerning the right to collect tithes, both pertaining to land, and sacramental tithes, and also novitiate tithes, in favor of the parish of Saint Cassian and others, this right remains fully intact, both by the reservation of the Ordinary, and by the ancient custom, and by the agreement initiated by the pastors of both churches. BURGOS OF THE HOLY SEPULCHRE, PROCURATION OFFICE. On September 12, 1891. Through summary petitions. In the recently elapsed month, the Bishop of Burgos of the Holy Sepulchre wrote to the Sacred Congregation, explaining that in his diocese, as well as in some neighboring ones, a custom prevails whereby the Ordinary, when performing a visitation and administering the sacraments, not only receives provisions from the visited parishes, but also expenses for transportation in order to reach the parishes. Therefore, somewhat doubting the propriety of this manner of acting, for the sake of his own conscience and tranquility, he requested a dispensation for the time being, so that he might not unduly receive expenses for transportation to the parishes, both for himself and for one other person; and he requested the faculty for the future to demand compensation for such expenses. SUMMARY OF THE MATTER. A Synoptic Discussion. In order that those things which seem to be contrary to this custom may be briefly

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recalled, it is first necessary to remember that the Fathers of the Council of Trent, in session 24, chapter 3, concerning reforms, forbade that Bishops visiting « receive anything for the purpose of procuration... or under any other name, neither money, nor any gift whatsoever, even in any form, notwithstanding any custom, even if ancient, except for provisions, etc. » In this, the Holy Synod forbade even the expenses for transportation.

[*Latin ed. p. 366*]

366. In BURGI, S. Sepulcri, haec quaestio est saepe discussa in Congregatione Concilii, ut patet ex actis: in Larinen, 12 Aprilis 1698; in Amalphitana, 18 Iunii 1699; in S. Marci, 7 Iulii 1608; et postea in Tarentina, die 18 Martii 1826, in qua propositum dubium erat: "An Archiepiscopo visitanti debeantur expensae itineris, equorum seu vecturarum, in tali casu?" Sacra Congregatio respondit: "non." Hoc idem docet Ferraris in sua *Bibliotheca canonica*, sub verbo "Procuratio," citans duas resolutiones Sacrae Congregationis Episcoporum et Regularium, in Ventimilien, die 21 Augusti 1606, et in Caiacen, die 20 Martii 1615; et etiam Lucidi in appendice, tom. 1, pagina 166, qui, scribens cum auctoritate, dicit: "pro vecturis et ferraturis equorum, visitato procurationem praestare non adiguntur." Si vero huiusmodi expensae iniuste in tali casu perceptae sunt, sequitur Episcopus ad restitutionem tenetur, cum absolutio, ubi ius tertii adest, laesioni concedi non solet.

QUAE CONSUETUDINI FAVERE VIDENTUR. Verumtamen, circumstantiae particulares non videntur desistere ad iuris rigorem hic aliquatenus emolliendum, quae ab ipso Antistite in suis litteris enumerantur. Scilicet, observandum est: 1. redditus mensae illius non excedere lib. 6 0 0 0; et parochos non debere Episcopo cathedraticum aut similia reddere. 2. Dioecesim istam constantem 135 paroeciis esse, latam et salebrosam, nimisque onerosum esset Episcopo, si deberet quotannis ferre expensas vecturarum; dum pro parochis, qui quolibet quinto aut sexto anno id ferre debeant, levius esset. Onera autem a gubernio imposita Episcopalibus, mensis nunc esse importabilia.

Quibus omnibus, haud immerito addi posset recepta in dioecesi Burgi S. Sepulcri consuetudo, quae quanti facienda sit, exploratum est in iure, ex cap. 9 *De consuetudine*, et ex multenis Sacrae Congregationis Concilii resolutionibus, quaeque, saltem ad bonam Praesulis fidem in tuto ponendam, atque proinde ad absolutionis concessionem pro praeterito tempore congruenter invocaretur.

Quibus animadversis, quaesitum est, quomodo precibus responderetur.

[*Latin ed. p. 367*]

BURGOS, Church of the Holy Sepulchre, 367. The Sacred Congregation of the Council, having considered the matter, on September 1, 1891, decided to respond as follows: Regarding the granting of absolution and re-

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mission concerning past actions; regarding the future, negatively, and that the cathedraticum [tax] be demanded according to the law. FROM WHICH THE FOLLOWING ARE GATHERED: I. That a Bishop, while conducting a visitation, and others accompanying him, may receive from those being visited nothing other than provisions (1). However, according to Session 24, chapter 3 of the Council of Trent concerning provisions, it is permitted to offer money in lieu of "provisions," provided that there is only one procuration, even if several places are visited on the same day. III. That Bishops, according to the law, can demand the Synodaticum or cathedraticum: that is, a tax paid in honor of the episcopal cathedral; also, the right to demand a fourth of funeral expenses, a fourth of tithes.... RESOLUTION. WROCLAW. REGARDING AN IRREGULARITY. On September 12, 1891. Through summary petitions. Hermann, born on February 15, 1865, from Catholic parents but raised in the heresy of the Protestants, was baptized by a Catholic priest, and thus received the first instruction in the true religion. Soon, while living in a Protestant gymnasium, in the year 1886, he fell into heresy and adhered to it for almost two years. However, with God's help, he later recovered, and, again led by the love of truth, in the month of August 1888, he professed the Catholic faith, and decided to dedicate himself to the clerical life, and to devote himself perpetually to the service of the Church. Therefore, he applied himself to theological studies, and then, entering the Wratislaviense Seminary, desiring to be initiated into the sacred orders, he requested a dispensation from the irregularity from the Most Holy Pontiff. The aforementioned petitions were presented to the Sacred Congregation of the Council. CONCISE SUMMARY OF THE MATTER: See Recole, Vol. XV, 81.

[*Latin ed. p. 368*]

368 BRESLAU. Per congregationem diei 28 Februarii 1891, fuit respondendum: "Pro nunc non expedire, et interim det ulteriori perseverantiae signa." Nuperrime vero, Episcopus Breslauensis litteras ad S. C. misit, in quibus gratiam dispensationis ab irregularitate pro Hermanno iterum petit, scribens sic: "Ab illo tempore, scilicet ab habito responso S. C., degens in Seminario, tam pietati et poenitentiae, quam scientiae valde studuit, et a praepositis seminarii ob bonos mores et studium pietatis et scientiae bene laudatus et commendatus est, et videtur requisita perseverantiae signa dedisse et dispensatione dignus fieri. Quare denuo audeo implorare, ut desideratam dispensationem super irregularitate clementissime concedere dignetur, praesertim cum in mea Dioecesi penuria sacerdotum sit nimis magna." Disceptatio Synoptica. INDULTUM DENEGANDUM VIDETUR. Notum est quanta severitate semper Ecclesia se gesserit cum haereticis, quos et civiles leges, Cod. Theocl. de haer. L 9, infamia notatos, pluribus poenis quandoque multabant. Qui vero in haeresim lapsi ad catholicam unitatem redirent, priusquam in fidelium communionem reciperentur, se

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longa probatione emendatos debere ostendere. Apud Labbaeum, Conc. tom. 1, col. 995, relatum est Concilium Eliberitanum decem annorum poenitentiam ab eis exegisse, quod tempus tamen Agathensis Synodus ad tres annos, et deinde Epaonensis ad brevius etiam tempus contraxit. Unde in casu cum agatur de lapso ad sacros ordines promovendo, benigna potius quam rigida S. C. responsio diei 28 Februarii retinenda videretur, neque adhuc tempus censendum esset advenisse, quo requisita perseverantiae signa exhiberi potuerint. INDULTUM DANDUM VIDETUR. Nihilominus perpendendum est neminem melius quam Episcopus et seminarii moderatores de emendatione et poenitentia Hermanni iudicium ferre.

[*Latin ed. p. 369*]

Vratislaviensis. 369. The ancient discipline of the canons, as in many other matters, has been mercifully mitigated in our time, considering the particular circumstances. Therefore, especially due to the scarcity of priests, which causes the Bishop of Vratislaviensis great sorrow, the requested grace should perhaps not have been postponed any further. And it does not seem that much time has passed since the first proposal of the petition. Indeed, since it is certain from the most wise oracle that many times can be fulfilled in a short time, Hermann should not be discouraged, as the Bishop writes, but should have shown signs of perseverance within a few months, which the Sacred Order wisely desires. Considering these things, it was asked what should be answered to the prayers. RESOLUTION. The Sacred Order, having learned of the matter on September 12, 1891, decided to respond: Considering the particular circumstances, at the discretion and conscience of the Bishop.

FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS.

NEOCASTREN. OR RECHNEN.

CONCERNING THE REDUCTION OF A PENSION.

The priest Dominicus, from the town of Tampani, commonly called S. Potito Ultra, in the Diocese of Avellino, received an annual pension of 50 ducats, or 212.50, free from any burden, in the title of S. Ordination, in accordance with both the Pontifical Bull of May 31, 1839, and the royal decree. This pension was originally imposed on the revenues of the churches of S. Agata Gothorum and Acerren, and later, by a ministerial decree, was transferred to the church of Neocastren. Both the Bishop of Neocastren, Hyacinthus M. Barberi, and his Coadjutor, Joseph Candidus, fully paid this pension to the priest of Tampani until June 31, 1889.

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COMPENDIUM OF THE FACTS.

Acts, Volume XXIV, page OOLXXXII. 24.

[*Latin ed. p. 370*]

370 NEOCASTREN. SEU REGINEN. At this very time, when the Bishop Candido had been transferred to the See of Iscla, his successor, the Reverend Father Valensisse, began to pay this pension, reduced by half. The Reverend Tampani, struck by this innovation, on August 17, 1890, presented a supplication to the Holy Congregation, raising a question regarding the actions of Bishop Valensisse, as being contrary to the Holy Canons. Upon receiving this supplication, the Holy Congregation decided on November 19th to respond: "The petitioner is referred to the Metropolitan, who, having considered the matter, shall resolve it in the first instance of jurisdiction; and the response shall be promptly reported to the Archbishop of Reginen." The Archbishop of Reginen, acting according to the mandate of the Holy Congregation, subjected the controversy to examination, and, after carefully considering the arguments presented by both sides, on March 25, 1891, rejected the appeal of the Reverend Tampani, and issued a judgment favorable to Bishop Valensisse, decreeing that the pension owed by Bishop Valensisse to the Reverend Tampani should be reduced to half its original amount. The Reverend Tampani, not accepting the judgment of the Archbishop of Reginen with a tranquil spirit, on April 18th, filed an appeal with the Holy Congregation, demanding that the aforementioned judgment be declared null and void.

Disputatio Synoptica. RIGHTS OF A COADJUTOR BISHOP. To resolve controversies arising between Beneficiaries and Pensioners, after the pseudo-laws promulgated by the Italian government against the property of the Church, the Blessed Pope Pius IX issued the decree *Cum nuperrimis* on January 28, 1871, by virtue of which the following provision was established: "That the loss or diminution of the revenues of Benefices shall affect both Beneficiaries and Pensioners, without any distinction being made between the Benefices themselves and the Pensions, so that, with the aforementioned revenues diminished or lost, the Pensions also must, in proportion, be diminished or cease, etc."

[*Latin ed. p. 371*]

NEOCASTREN. OR REGINEN. 371. Indeed, since it could happen that, despite this decree, the monthly payments to bishops and the appropriate allowances to parishes, as defined by the Council of Trent, would not be provided, in the same decree, the Pontiff himself cautioned that, "Regarding cathedrals (or episcopal monthly payments) and parishes subject to the burden of pensions, it was expressly decreed and prescribed that their benefit should always be preserved in full, and that the appropriate amount should remain intact, in accordance with the decrees of the Council

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of Trent." However, despite these provisions, certain difficulties arose concerning the payment of pensions, which were imposed either on episcopal sees or on parishes, the revenues of which exceeded either one thousand or one hundred ducats; therefore, on May 30, 1873, it was deemed appropriate to respond: "A proportional reduction of pensions, corresponding to the diminution of the revenues of the benefices, should be established regarding the remaining portion of said benefices." Having considered these legal precedents, it was determined that the opinion of the Archdiocesan Court of Reginen was just, indeed, exceedingly benevolent, and therefore should be maintained in full force. For, from what Bishop Valensisse presented, it is evident that the revenues of the episcopal see of Neocastren, which were previously free from any burden, amounting to 60,295.75 livres, were subsequently reduced to 14,931.51 livres. From this sum, if 5,372.50 livres are deducted, the remainder is less than one-fifth of the original revenue. Hence, everyone can easily understand that the pension to be paid to the priest Tampani should not have been reduced to half, as the opinion of the Archdiocesan Court of Reginen prescribed, but rather to one-fifth. Moreover, the difficulty raised by the Reverend Tampani must be considered: that the pension to be paid to him constitutes a patrimonial right, and therefore cannot be diminished in any way, under penalty of his incurring a penalty of suspension. This difficulty is indeed addressed by the aforementioned decree: "Whereas, in the most recent statutes, it is established that..."

[*Latin ed. p. 372*]

372 NEWCASTLE. OR REGION. Those who have been ordained with the title of "Region" and, because of this regulation, are deprived, either in part or entirely, of their sacred patrimony, shall incur no suspension for this reason, nor shall they be subject to ecclesiastical penalties.

SACRED FUNDS. Regarding the Sacred Fund, it has been noted that the aforementioned decree, "<Cum nuperrimis>," was issued so that beneficiaries and pensioners would proportionately bear the losses resulting from the reduction of income, since ecclesiastical benefices existing in Italy, due to laws enacted by the Italian government, have, in recent times, been subject to such reductions. Once this has been established, it seems that, after the passage of 20 years, it is no longer permissible for those in possession of benefices to invoke this decree again, in order to further reduce pensions. Indeed, it appears just and equitable that, once such a proportion has been established, access to further reductions should be prohibited, so that beneficiaries or pensioners are not given an opportunity to initiate new lawsuits. Furthermore, it has been considered that the Supreme Pontiff must take into account the income and expenses of any benefice when conferring it. Therefore, any pensions imposed by the Pontiff himself are entirely valid, and they cannot be reduced by reason of the decree

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"<Cum nuperrimis>." In confirmation of this, the document from Rome, dated July 29, 1881, and the document from Nepeta, dated August 2, 1874, were presented, in which the Sacred Congregation decreed that a pension imposed by the Supreme Pontiff must be paid in full, notwithstanding the aforementioned decree "<Cum nuperrimis>," to which beneficiaries burdened with pensions were appealing. Furthermore, in the matter in which the Bishop of Valentia was substituted for the Bishop of Candida without any distinction or limitation, it seems just that he should pay all pensions in the same amount as his predecessor, Bishop Candida, was accustomed to pay them. Nor should anything be done that both Bishop Barberi and Bishop Candida intended regarding the sacred fund.

[*Latin ed. p. 373*]

NEOCASTREN. OR REGINEN. 373 The matter of the diminished sum must be settled; for it is stated that the entire sum was, in fact, completely paid. And this matter should be considered with even greater care, since, on the one hand, the sum in question is very small; on the other hand, it concerns a pensioner of advanced age and in dire need, who must provide for the necessities of life for two elderly sisters. After considering both sides, the following question was proposed for resolution: Whether and how the judgment issued by the Archiepiscopal Curia of Reginen on March 23, 1891, in this case, should be confirmed or rejected. RESOLUTION. The Most Holy Congregation of Bishops and Regular Canons, after mature examination of the matter, responded and decided on September 11, 1891: Considering the particular circumstances, negatively regarding the first part, and affirmatively regarding the second, and furthermore. FROM THE HOLY CONGREGATION OF RITES, CUNEEN. Regarding the ring: The current Master of Sacred Ceremonies in the seminary of Cuneo, by order of the Most Reverend Bishop of Cuneo, humbly submitted the following questions to the Sacred Congregation of Rites for a suitable solution: Question I. Whether the Bishop must wear the pontifical ring even during the solemn chanting of the Third Hour? And whether, after washing his hands, it should no longer be worn unless he is vested for Mass, since that would require the assistance of a priest? Question II. In some editions of the Roman Pontifical, the table of oils is shown adorned with a cross and two or even six candlesticks. Since the rubric is silent on these ornaments, the question is asked: Whether, in the aforementioned table, a cross with candlesticks can be, indeed should be, placed?

[*Latin ed. p. 374*]

374 FROM THE SACRED CONGREGATION OF RITUAL, Question III. Whether three ampoules of oils to be consecrated on the Feast of the Lord's Supper, on the fifth day, ought to be stripped of their silk coverings when the Bishop begins to bless the individual oils? Or, indeed, should only the

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ampoule of the oil of the sick and of the catechumens be stripped, since the Pontifical says concerning the ampoule of chrism: "Having removed its silk covering, which it previously had." Question IV. Whether, in the First Vespers of Saint Justin the Martyr (April 14), for the commemoration of the Saints Tirburtius and Soc., the antiphon "Laudum" should be sung, as indicated in the "Breviarium Romanum" edition of Ratizbonae, in the year 1889; or, indeed, whether the antiphon "Lux perpetua" should be sung, as some liturgical writers have suggested, from the Second Nocturn. And the Sacred Congregation, after receiving a carefully considered opinion from one of the Masters of the Apostolic Ceremonies, decided to respond to the questions as follows: To I. Negatively to the first part; affirmatively to the second. To II. Negatively. To III. Affirmatively to the first part; regarding the second, the ampoule of the sacred chrism must remain wrapped in its pallium, until, after the balsam has been added, the Deacon removes it and places it around his neck. To IV. For the aforementioned commemoration, the edition of the "Breviarium Romanum" should be followed. And thus it responded and ordered it to be observed on May 29, 1891. CARDINAL ALOISI - MASELLA, Prefect. S. VINCENZI, Secretary. NONANTOLA concerning the office to be used on the feast of Saint Hadrian III. After, by Decree of the Sacred Congregation, on June 2 of this year, the public ecclesiastical cult, which has been offered from time immemorial to Saint Hadrian III, Pope and Confessor, was confirmed by the Most Holy Pope Leo XIII, the Most Reverend Charles Borgognoni, Archbishop of Mutina [and Abbot Commendatory of the Abbey of Nonantola of Saint Sylvester], repeatedly requested the same Most Holy Pope, so that on the feast of the aforementioned Saint Hadrian, the following should be done:

[*Latin ed. p. 375*]

From the Sacred Rituals, number 375, it is permitted that the Office of the Pontifical Confessor be celebrated in the second place, with historical readings, and the corresponding Mass, with proper prayers, which have been humbly submitted for the approval of the aforementioned Sacred Congregation. To these requests, [he] also added his own. The Most Eminent and Reverend Lord Cardinal Lucido Maria Parecchi, Vicar of the Most Holy Lord in the venerable City of Rome, requested that the feast of the aforementioned Saint Hadrian, Pope III, Confessor, may be celebrated by the clergy of the City and its district, as well as by those who use the Roman Calendar, both secular and regular, on the seventh day of September, under a double minor rite, with the aforementioned Office and Mass. Therefore, the Most Eminent and Reverend Lord Cardinal Caietan Aloisi-Masella, Prefect of the Sacred Congregation for Rituals, presented such prayers in the ordinary meetings of the aforementioned Sacred Congregation, held on the day indicated at the Vatican. The Eminent and Reverend Fathers entrusted with safeguarding the Rituals, having carefully considered everything, and

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having heard the Reverend Father Augustine Caprara, Promoter of the Faith, decided to respond: "For the sake of the petitioner and the Promoter of the Faith." Therefore, after the aforementioned readings and prayers have been revised and corrected by the aforementioned Cardinal and the Promoter of the Faith, the Sacred Congregation itself approved them all, as is stated in the preceding decree, and benignly granted that they may be used by the Roman, Nonantulan, and Modenese clergy on the feast of Saint Hadrian, Pope III, Confessor. September 5, 1891. [Signed:] CARD. ALOISI-MASELLA, Prefect of the Sacred Congregation for Rituals. L. & S. VINCENTIUS NUSSI, Secretary of the Sacred Congregation for Rituals. BOBBIO. Regarding the verse "Pray for us, O Holy Mother of God." The Bishop of Bobbio humbly explains to the Most Eminent Lord that in his diocese, there exists the practice of reciting the Rosary and singing the litanies before the Benediction with the Blessed Sacrament, and that the exposition of the Blessed Sacrament takes place while the litanies are being recited. Since the recitation of the Rosary with the added litanies of the Blessed Virgin has been prescribed by the Most Holy Pope, the question arises: 1.° Is the verse "Pray for us, O Holy Mother of God," which is mentioned in the appendix, to be said before the prayer that is said after the litanies?

[*Latin ed. p. 376*]

376. From the Ritual of Rome, without the addition of "Domine exaudi" etc., and "Dominus vobiscum?" 2. In the affirmative case, since such a practice is universal, if in some diocese there were a parish in which, after the "Ora pro nobis" prayer, "Dominus vobiscum" and "Domine exaudi" were also added, the diocesan bishop, in order better to fulfill the pontifical prescription and to ensure uniformity throughout the entire diocese, could determine whether only the "Ora pro nobis" prayer should be recited in all churches of his diocese. 3. Finally, it must be held, as a general rule, that the verses "Domine exaudi" and "Dominus vobiscum" should be recited before the prayer only in those cases in which the Roman Ritual prescribes them? The Sacred Congregation for Rites, after maturely considering the doubts proposed, responded as follows: THE ROMAN RITUAL MUST BE OBSERVED. And thus it responded and ordered to be observed, on November 20, 1891. C. Card. ALOISI-MASELLA, Prefect of the Sacred Congregation for Rites. L. & S. VINCENTIUS NUSSI, Secretary of the Sacred Congregation for Rites.

REGARDING doubts concerning the anniversary of the Bishop's consecration. The following doubts were proposed to the Sacred Congregation for Rites for a suitable declaration: I. When the anniversary of the Bishop's consecration is accidentally impeded by a movable feast of the first class, should it be transferred, or should it be omitted? II. When the same anniversary is annually impeded by a feast of the first class, which is fixed to a particular day, should it be transferred, or should it always be

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omitted? And the same Sacred Congregation, after considering the report of the undersigned Secretary, decided to respond as follows: Regarding I. Negatively to the first part; Affirmatively to the second part. Regarding II. Affirmatively to the first part; Negatively to the second part. And thus it declared and responded, on December 12, 1891. C. Card. ALOISI-MASELLA, Prefect of the Sacred Congregation for Rites. L. & S. VINCENTIUS NUSSI, Secretary of the Sacred Congregation for Rites.

[*Latin ed. p. 377*]

377 FROM THE HOLY CONGREGATION OF INDULGENCES: Indulgences granted to the Christian faithful on the occasion of the episcopal Jubilee of the Most Holy Father Leo XIII. Most Blessed Father, The central Commission of Rome, established in honor of the episcopal Jubilee of Your Holiness, prostrate before the Holy Foot, presents the following: In addition to the works established to celebrate this joyous event, the Work of Prayer has also been promoted, in concert with the Most Reverend Cardinal Vicar. In the program to be disseminated for this purpose, the following practices of piety are especially recommended to the faithful: 1. The celebration of Holy Mass every Sunday from February 19, 1892, to February 19, 1893, with the Communion of the faithful, recitation of the Rosary, a brief discourse, prayer for the Holy Father, and the blessing of the Most Holy Sacrament in the churches designated by the respective Ordinaries. 2. Communion, or Holy Masses attended by the faithful of both sexes. 3. Recitation of the Rosary, either privately or in common, especially within the family. 4. Visits to the Blessed Sacrament at all times, preferably when it is exposed for public veneration. Now, the same Commission humbly requests Your Holiness to deign to grant the following Indulgences for the aforementioned practices of piety: 1. Partial Indulgences: a) of 7 years and 7 quarantines for those who devoutly and with a contrite heart participate in the aforementioned weekly function mentioned in number 1. b) of 300 days for each of the three practices of piety indicated above in numbers 2, 3, and 4. 2. A plenary Indulgence on the first day that the aforementioned function, number 1, takes place, provided that the faithful who attend it approach the Sacraments of Confession and Communion.

[*Latin ed. p. 378*]

378 FROM THE DECREE ON INDULGENCES. The purpose established for these acts of piety is that which has been proposed by the Commission, namely: 1. The safety of the Holy Father and the exaltation of the Holy See. 2. The successful outcome of the preparations and the Jubilee celebrations. 3. The triumph and propagation of the Holy Church. Most Reverend Father, the central Commission, established in Rome, in order to duly celebrate the solemnities of the episcopal Jubilee of Your Holiness, humbly prostrates itself before the Holy Feet, and presents the following: Along with the

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works established for the successful celebration of the event, a pious work of prayer has also been promoted, with the consent of the Eminent Cardinal Vicar. In the program, in order to make this known, the following acts of piety are proposed to the faithful: 1. The celebration of Holy Mass every Sunday, from February 19, 1892, to February 19, 1893, with the Communion of the faithful, the recitation of the Most Holy Rosary, a brief sermon, with a prayer added for the Supreme Pontiff, and the blessing of the Most Holy Sacrament in the churches designated by the respective Ordinaries. 2. Communion, or Holy Mass, to which the faithful of both sexes shall attend. 3. The recitation of the Most Holy Rosary, either privately or publicly, especially in the homes. 4. Visits to the Most Holy Sacrament, especially at the time when it is publicly exposed for veneration. Therefore, the same Commission humbly implores Your Holiness to deign to attach the following Indulgences to the aforementioned acts of piety: 1. Partial Indulgences: a) Seven years and forty days for those who devoutly and with a contrite heart attend the weekly function mentioned in n. 1. b) Three hundred days for each, of the three acts of piety mentioned in n. 2, 3, and 4. 2. A plenary Indulgence on the first day on which the aforementioned function takes place in n. 1; provided that the faithful who attend it are truly penitent, have confessed, and have received the Sacraments.

[*Latin ed. p. 379*]

FROM THE SACRED CONGREGATION FOR INDULGENCES, 379. The end of these pious works is that which the Commission has established, namely: 1. The safety of Our Holy Father and the exaltation of the Holy See. 2. The successful outcome of the undertakings and solemnities of the Jubilee. 3. The triumph and propagation of the Holy Church. His Holiness Pope Leo XIII, in an audience held on January 16, 1892, graciously granted, with the due reservations to be observed, to all the Christian faithful who perform works of piety, as specified in the prayers, the requested indulgences, even for the souls detained in the fire of Purgatory. This concession is valid for the present time, without any need for a brief. Contrary to anything to the contrary notwithstanding. Given in Rome, from the Secretariat of the aforementioned Congregation, on January 16, 1892. I. CARD. D'ANNIBALE, Prefect. * L. * S. f& A L. ARCHIEP. NICOP. Secretary. FROM THE EIGHTH CONGREGATION CEREMONIAL. Regarding the use of the mitre by Bishops. On May 20, 1890. At the meetings held in Vatican on May 20, 1890, among other matters proposed to the Sacred Congregation for Ceremonial matters for resolution, the question was also raised as to whether the Most Eminent and Reverend Lords Cardinals, or the Reverend Bishops, and all those who enjoy the use of the mitre by Apostolic indult, when assisting at the sacred ceremonies, either separately or collegially, are obliged to uncover their heads during the chanting of the Holy Gospel and while incense is being burned. After

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mature deliberation, the Reverend Fathers decided affirmatively, and ordered that this be observed without fail. R. MONACO LA VALLETTA, Prefect. ALOYSIUS SINISTRI, Secretary.

[*Latin ed. p. 380*]

380 EX 8. GONG. R. U. INQUISITIONIS. To the Ordinaries of the places within the Catholic world, the faculty is granted to dispense to the faithful under their care from the law of fasting and abstinence, until... The cares of Apostolic authority and benevolence having been drawn to them, by the condition and nature of the disease which, at this time, not only afflicts Europe but widely pervades other regions of the world. For while this evil is raging, the Most Holy Pope LEO XIII, for the utmost concern he shows, to consult not only for those things which pertain to the soul, but also for those which pertain to the good of the body of the faithful, has considered it his duty to grant to the faithful those safeguards which are within his power, which may be of service to the safety of their bodies and lives against the force of the prevailing disease. Wherefore, by means of the ministry of the Sacred Congregation of the Supreme Roman Universal Inquisition, using its authority, to all Archbishops, Bishops, and Ordinaries of the Catholic world, in all regions where the disease mentioned above prevails, is granted, by Apostolic authority, the faculty to dispense to the faithful under their care from the law by which they are bound to observe abstinence and fasting, until, in those same places, their own judgment deems that this Apostolic indulgence is required by the reasons of public health. Moreover, His Holiness desires that, while the faithful make use of this Apostolic benevolence, they strive more diligently to dedicate themselves to pious works, which are conducive to meriting divine mercy. Therefore, he exhorts them to diligently apply themselves to assisting those in need of charity, to attending prayers and sacred services in the temples, and to frequent use of the sacraments, in order to pray to and appease God, since it is clearly evident that the evils which afflict us are to be referred to divine justice, which, because of corrupt morals and the widespread flood of wickedness, demands just punishments from men. Rome, on the 14th day of January, in the year 1892. R. CARD. MONACO.

[*Latin ed. p. 381*]

381 APPENDIX L EXHIBITING THE ACTS OF THE APOSTOLIC SEE; WHICH EITHER HAVE BEEN PUBLISHED FOR A LONG TIME, OR WHICH HAVE RECENTLY COME TO LIGHT FOR THE BENEFIT OF THE EDITOR OF THE PERIODICAL. Declarations of the Sacred Congregation of Propaganda Fide concerning the instruction for defining criminal cases of Clergy, referred to in Volume Xli, 88. I. The instruction of July 20, 1878, pertains to cases in which ecclesiastical punishment or censure should be imposed, or in which a serious disciplinary measure

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should be applied. Consequently, the decrees of the Second Plenary Council of Baltimore, no. 125 concerning the nature of Missions, nos. 77, 108 concerning the legal effects of the removal of missionaries from office, have not been altered or invalidated in any way. Bishops should take care not to transfer priests from one mission to another without a serious and reasonable cause. Furthermore, if the definitive removal of a Rector from office as a punishment for a crime is being considered, the Bishop shall not order its execution unless he has first heard the Council. II. The election of Councilors must be carried out in the Synod in the manner of a deputation, or of the canonical election of Synodal Judges, who are not chosen by the clergy but by the Bishop, after having heard the advice of the clergy in the Synod; although, for reasons known to him, the Bishop may subsequently refuse to adopt it, as Benedict XIV rightly observes in *De Syn.*, book V, chapter V, no. 5. Therefore, it is clear that, in the case to which the Instruction refers, the election of Councilors pertains to the clergy. Outside of the Synod, the election absolutely pertains to the Bishop, who ought to hear the opinion of the other Councilors in the case of the replacement of someone who has failed, just as the Bishop must seek the advice of the chapter when a Synodal Judge is lacking, but he is not bound to follow it. III. The opinion given by the Council is always advisory, and the final judgment is reserved to the Bishop; for when the canons state that something should be done by the Bishop with the advice of the chapter or the clergy, it does not necessarily obligate the Bishop to follow it, unless it is expressly stated. — It often happens that acts of the Apostolic See, of great utility, reach our hands, either after having been published for a long time, or recently; which, however, had previously remained unknown to us. So that our readers, and those who are the best, may not be deprived of this benefit, we have considered it appropriate to include these same acts, when they come to our knowledge, in small appendices, noting by which Sacred Congregation the Roman Pontiff has promulgated them.

[*Latin ed. p. 382*]

382 APPENDIX I. sit. Hence, it is rightly stated in the Instruction that these advisors are to assist the Bishop in defining cases, but not at all to make the decision themselves. However, the acts of the inquiry, and the opinion expressed by the advisors, must always be included in the proceedings. From this, it is clear that the office of the advisors is judicial, since the instruction is entrusted to them, and they assist the Bishop as assessors; but it is also clear that the judicial and definitive pronouncement is solely reserved to the Bishop. IV. The Instruction does not remove from the Bishops the extraordinary faculty of proceeding to suspension, based on informed conscience, whenever they judge that very serious and canonical reasons are present in the matter, or when, for the sake of the salvation of souls, they deem it necessary to provide some remedy, even without prior con-

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sultation. It is permissible for each Rector to have with him another priest, approved by the Bishop, before the Council, either for simple attendance, or to present his observations or defense. Questions to be submitted to the Sacred Congregation for the Propagation of the Faith, whenever the local Ordinaries visit the Holy See, according to the Instruction given in Volume X, 202. 1. State the name, age, and country of the Bishop, and also the Institute, if he belongs to a religious order. 2. The extent and quality of the Diocese. 3. In which Province it is located, or how many Provinces it contains. 4. If the Church is archiepiscopal, how many and what kind of suffragan sees it has; if it is a diocesan see, to which Archbishop it is a suffragan. 5. Does it have a cathedral, and a proper residence, and in which city? 6. Does the Bishop have any special faculties from the Holy See, and what are they? 7. Does he have any income of his own, how much, and in what does it consist? 8. List the locations of the Diocese, and their respective distances. 9. When was the Visitation of the Diocese completed; and were any canonical prescriptions put into effect? 10. When were the Provincial and Diocesan Synods held? 11. Does any annoyance arise from neighboring Bishops regarding the exercise of jurisdiction? 12. Does it have a Chapter, and how many canons does it consist of? 13. Are there any prebends, and what are they? 14. What service do the cathedral canons provide; and do they also perform the office of parish priests in places within the Diocese?

[*Latin ed. p. 383*]

APPENDIX I. 383

15. Whether they reside within the boundaries of the Parish.

16. Whether they interfere in the governance of the Church, hindering the free jurisdiction of the Bishop?

17. Whether they have a Seminary, and where: how many young men are educated there, and what studies do they pursue?

18. Whether the regulations of the Council of Trent concerning the Seminary are observed?

19. Whether there are Parish Priests present, or only simple Missionaries?

20. Whether the Parish Priests are permanent, or removable at the will of someone, and whether they celebrate Mass on feast days for the people?

21. Whether they are appointed by the Bishop?

22. How many Parishes are there: whether the Most Holy Eucharist is preserved in them, and with what reverence?

23. Whether they have defined boundaries, and their own Church: and how many chapels are found within the district of each Parish?

24. Whether any Parishes are subject to Regular Orders, and to which

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Orders?

25. Whether the Parish Priests have priests who assist them in the care of souls?

26. State the number and quality of Catholics residing in each place.

27. Whether there are Catholic schools, and how many: and how many are enrolled in them?

28. Whether there is Christian instruction in the vernacular language, purged of all error.

29. Whether there are schools for non-Catholics, and how many: and how many Catholics attend them?

30. State the number of indigenous priests, and of foreign priests.

31. Their homeland, their character, their duties, in which they exercise themselves, and for what benefit they are to the service of the Church.

32. Whether these priests have faculties from the Apostolic See, and at whose expense do they live?

33. Whether among these are found alumni of the Sacred Congregation for the Propagation of the Faith: who they are: and whether they fulfill their duties?

34. Also state the name, age, and qualities of the indigenous priests who are outside the Diocese; then also note the places where they reside: what they do there: and whether they are bound by any particular title to serve their own Church?

35. Whether there are also clerics, and how many: how, and under what title are they ordained; where do they reside; and what is required of them in order to be promoted to the Sacred Orders?

[*Latin ed. p. 384*]

384 APPENDIX I. 36. If there are Regular Missionaries present, how many are there, of what Order, and from what region? 37. Are certain districts assigned to each Order, and by what authority? 38. Where do they reside, to which Superiors are they subject, and how many houses do they have? 39. Do they have established convents, or merely hospices, and is enclosure observed within them? 40. Do they live in community, with regular observance, or do they live alone, in private houses, with secular individuals, and especially with women? 41. In what manner do they conduct themselves? 42. Do they admit indigenous individuals to the habit and profession of their Order, and by what authority? 43. Do the Regulars have special faculties, and do they present them to the Bishop before exercising them? 44. In what matters are they dependent on the Bishops? 45. By what means are they supported; do they receive anything for the administration of the Sacraments, and what is their reputation? 46. Do they perform any useful work for the salvation of souls and for the increase of the Religion? 47. Is there any convent of religious women present; of what

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Institute; founded by what authority; and to whose care and ministry is it subject? 48. Is the common life observed there, and are the religious women bound by solemn vows of Poverty, Chastity, Obedience, and Enclosure? 49. Are there any pious foundations or endowments in the diocese? 50. Are the revenues for such endowments administered properly, and are the canons concerning them observed? 51. Let all abuses, which may have occurred, even among Catholics, be enumerated, whether concerning faith and rituals, or concerning morals, or the administration of the Sacraments, the preaching of the divine word, or of any other kind. 52. Let the principal causes of such abuses be expressed, and how they may be eradicated. 53. Are marriages contracted properly? 54. Has the state of the Catholic Faith increased, or rather decreased, in these past twenty years, and for what reason? 55. Finally, let him carefully consider the spiritual needs of Christianity in that place; let him state them distinctly; and let him propose suitable means for eradicating past errors and for promoting the greater progress of the Religion.

[*Latin ed. p. 385*]

APPENDIX 385

I. Instruction of the Sacred Congregation for the Propagation of the Faith, 1883, concerning the manner in which criminal and disciplinary cases involving clerics in the United States of America should be investigated and determined. Since it is greatly to the benefit of this Sacred Congregation that, in ecclesiastical judgments, a method be observed which is both appropriate to the circumstances of the times and conducive to the regular administration of justice, and that due care be taken to protect the authority of the prelates and to prevent complaints from the accused, it has been decided to again review all that was contained in this matter concerning the churches of the United States of America in the Instruction of July 20, 1878, as well as in the response to questions subsequently raised concerning the same. Therefore, after mature deliberation, with the approval of His Holiness Pope Leo XIII, this Sacred Congregation has decreed the following, abrogating the preceding Instruction and the subsequent declaration, except for those provisions contained herein.

I. The Ordinary is bound by his pastoral office to diligently care for the correction and discipline of clerics, so that he may constantly observe their conduct, and to provide remedies established by canon law, whether for preventing or removing abuses that sometimes occur among the clergy.

II. These remedies are of two kinds: some are preventive, others are repressive. The preventive remedies are intended to prevent evil, to remove scandalous influences, and to avoid voluntary occasions and proximate causes of wrongdoing. The repressive remedies, on the other hand, are es-

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tablished with the purpose of bringing the offenders back to good conduct and of removing the consequences of their faults from the community.

III. It is left to the conscience of the Ordinary to apply each remedy, provided that the canonical prescriptions are observed, according to the gravity of the cases and circumstances.

IV. The preventive remedies are primarily spiritual exercises, admonitions, and precepts.

V. However, before these are applied, a summary review of the facts should precede, of which the Ordinary should take care to keep a record, so that, if necessary, he may proceed further, and so that he may render an account of the entire matter to the ecclesiastical authority of a higher grade in the event of a legitimate appeal.

VI. Canonical admonitions may be given either secretly (even by letter or through an intermediary) in the manner of paternal correction, or they may be applied in accordance with the legal form, provided, however, that the execution of such admonitions is made manifest in some way.

VII. If admonitions prove ineffective, the Ordinary orders that a formal precept be notified to the offender through the Curia, so that in this case, the Act may be explicitly recorded.

[*Latin ed. p. 386*]

386 APPENDIX I. concerning which, what he ought to do or avoid, is added, along with the respective ecclesiastical penalty that he will incur if he transgresses the precept. VIII. The precept is imposed upon the delinquent by the Chancellor of the Curia, in the presence of the Vicar General, or even before two witnesses, either ecclesiastical or lay, of proven integrity. 1. The act of imposing the precept is signed by those present, and also by the delinquent himself, if he so wishes. 2. The Vicar General may require the witnesses to swear to maintain secrecy, if the nature of the matter requires it. IX. Furthermore, it should be noted that the extrajudicial remedy, established by the Most Holy Council of Trent (C. I. § 14, de Ref.), for hidden offenses, remains in full force and effect at the discretion of the Ordinary. X. In criminal proceedings, or for the violation of a precept, or for common offenses, or for the transgression of ecclesiastical laws, a summary process is carried out, without undue publicity, always observing the rules of justice in their entirety. XI. The process is initiated ex officio, or upon receiving a complaint, or an accusation, or a notification of any kind that reaches the Curia, and is pursued with the aim of uncovering the truth with all diligence and prudence, so that the accused may be cleared of the charge, or, if guilty, may be justly punished. XII. Where Curias have already been established, the process can be entrusted to a learned and experienced ecclesiastical expert, who will be assisted by a secretary. However, in dioceses in which episcopal Curias have not yet been able to be

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established, the instructions of 1878, along with the subsequent response to the proposed questions, are to be observed in the meantime. Specifically, each Ordinary, after consulting with the clergy, which he is not bound to follow, shall select five, or, if the circumstances do not permit, at least three, most worthy and, as far as possible, expert in Canon Law, to perform this office, as stated in the aforementioned Instruction. If, for some serious reason, a Synod cannot be held, the Bishop shall appoint five or three, as above, ecclesiastical experts for this purpose. Those elected shall remain in office until the next Diocesan Synod, at which time they shall either be confirmed, or others shall be designated in their place. If, at any time, the prescribed number of advisors is reduced by death, resignation, or other cause, the Bishop, after consulting with the other members of the commission, shall appoint others to fill the vacancies. Furthermore, this commission of advisors shall take an oath.

[*Latin ed. p. 387*]

APPENDIX I. 387. Those who are under interdiction are bound to faithfully fulfill their office, and their affairs shall be managed under the presidency of the Bishop or the General Vicar.

XIII. In every episcopal court, a fiscal advocate shall be appointed, so that justice and the law may be satisfied.

XIV. For notifications or announcements, if the Court's messengers are lacking, the Bishop shall use any qualified person to deliver them, and shall inform the Court of this fact; or they may be sent through public notaries (where this system is in force), with due care taken to ensure the proper delivery and acceptance, or refusal. Notifications and announcements shall always be made in writing and completely.

XV. The basis of a crime can be derived from the evidence presented in the process, which is confirmed by authentic information or an extrajudicial confession, or by the testimony of witnesses; the transgression of a precept, however, is deduced from the very decree and act of notification, in accordance with articles VII and VIII.

XVI. For the admission of guilt, a legal presumption is necessary, which must consist of those moments in which the truth is clearly demonstrated, or at least a moral conviction is induced, with any reasonable doubt removed.

XVII. Persons who are to be examined are heard separately.

XVIII. Witnesses, for the purpose of providing evidence or for defense, if legal impediments do not prohibit it, are heard under oath to speak truthfully, and, if the matter requires it, also to maintain secrecy. Therefore, before they testify, they must swear both regarding the truth and regarding secrecy, concerning the matter in question. Moreover, all those who, in the course of the process, have a part to play in the faithful fulfillment of their

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duty and in observing the secrecy required for the matter in question, must be bound by oath.

XIX. Witnesses who give testimony in distant places or in a different diocese are to be examined by the ecclesiastical authority of the place where they reside, for which purpose a copy of the proceedings shall be sent: this authority shall observe the norms contained in this Instruction in its response.

XX. If witnesses are indicated who should be questioned about facts or circumstances that are substantial to the case, but cannot be examined, either because it is not permissible or proper to summon them to court, or because, when asked, they refuse to attend, it is necessary to record this in the proceedings, and their deficiency shall be made up by the testimony of others who know about the matter in question, either from their own knowledge or otherwise.

XXI. Where all that is necessary to establish the truth of the facts is...

[*Latin ed. p. 388*]

388 APPENDIX I. It pertains to the accuser to prove the guilt, that it may be declared absolute, and the accused, summoned by written notification, appears for examination. XXII. In the notification, unless prudence dictates otherwise, the accusations against the accused should be set forth in detail, so that he may be able to prepare his defense. XXIII. However, if it is not expedient, for reasons of quality or otherwise, to express the accusations in the notification, it will suffice to simply summon him to appear for examination, so that he may defend himself in the matter for which he is being investigated. XXIV. If he refuses to appear for the examination, a second notification is issued, and in it a reasonable deadline is set, within which the accused must appear before the tribunal; and he is informed that, if he does not comply, he will be declared contumacious. If he fails to appear, even after this notification, he will be considered contumacious in fact. XXV. If he does appear for the examination, he shall be heard; and if he presents any evidence of value, it shall be carefully examined as much as possible. XXVI. Then, the matter should proceed to the examination of the facts of the crime and the arguments presented, so that the accused may be declared guilty and be considered to have incurred canonical penalties. XXVII. The accused, when he knows what has been presented against him in the proceedings, may respond to it, and, if he wishes, may exercise the right of defending himself. XXVIII. He may also, if he requests it, obtain a deadline for presenting his defense in writing, especially if, for the reasons indicated in article XXIII, he has not been able to prepare a response to the accusations against him. XXIX. After the proceedings have been concluded, a summary of the main arguments, which are evident from the proceedings, shall be prepared. XXX. On the day the case is presented, the accused shall be given the opportunity to have his defense presented by

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another priest on his behalf. If he cannot find a suitable priest, he may use a Catholic layman. Each of these individuals must be approved by the Ordinary. XXXI. If the accused refuses to appoint a defender, the Ordinary shall, ex officio, appoint one. XXXII. The defender, with due precautions, shall examine the proceedings and their summary in the Chancery of the Curia, in order to defend the accused; and he may present his defense in writing before the presentation of the case itself. He, too, shall be bound by an oath to maintain confidentiality, if the judge deems it necessary to require it.

[*Latin ed. p. 389*]

APPENDIX I. 389 XXXIII. The process and its summary are sent to the fiscal procurator, so that he may perform his office; then they are sent to the Ordinary, who, having fully investigated the case, will set a date on which the discussion and decision will take place, and will ensure that this is notified. XXXIV. On the appointed day, the case is presented before the Bishop or the general vicariate, in the presence of the fiscal procurator, the defender, and the chancellor. XXXV. After hearing the fiscal procurator and the defense of the case, the sentence is pronounced, and its dispositive part is dictated to the chancellor, with explicit mention, if there is cause for condemnation, of the canonical sanction that is applied against the accused. XXXVI. The sentence is notified to the accused, who may appeal to a higher authority. (1) XXXVII. In the appeal, the norms expressed in the Constitution, *motu proprio*, of Benedict XIV, dated March 20, 1742, and the others indicated by the Holy See, by decree of December 18, 1835, and by the circular letter of August 1, 1851, must be observed. XXXVIII. Within a period of ten days from the notification of the sentence, the appeal must be filed; after this time has elapsed, the execution of the sentence takes place. XXXIX. Upon the filing of an appeal, the court immediately sends to the higher ecclesiastical authority all the acts of the case in their original form, that is, the process, its summary, the defense, and the sentence. XL. Furthermore, the higher authority, having cognizance of the appeal, orders the appellant to appoint a defender within thirty days, who "must be approved by him." XLI. If this peremptory term is not met, the accused is considered to have renounced the benefit of the appeal, and therefore the judge of the higher court declares the appeal dismissed. XLII. In an appeal from the sentence of the diocesan court to the metropolitan court, the Archbishop will proceed in the same manner as indicated in these instructions, in order to examine and decide the case. XLIII. If a cleric is subjected to a civil process and judgment by civil authority, notwithstanding the privilege of the forum, the Ordinary takes cognizance of a summary of the crime and inquires whether it is in accordance with the law. (1) Regarding the appeal, it is noted in the Plenary Council of Baltimore, III, that: "If it is necessary to appeal from the judgment of the metropolitan court of first instance to

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another court, the appeal, by special concession of the Holy See, shall be made to the nearest metropolitan."

[*Latin ed. p. 390*]

390 APPENDIX I. Certain offenses may give rise to ecclesiastical censure, irregularity, or other ecclesiastical sanctions. §. 1. While a judgment is pending, or while a person is detained in prison pending trial, it will be prudent for the Ordinary to apply only provisional measures. §. 2. Once a judgment has been rendered, if the accused is acquitted, the diocesan court will proceed, based on the information received as described above, in the manner established in these instructions. XLIV. In cases of doubt and various practical difficulties, Ordinaries should consult this Sacred Congregation, in order to avoid disputes and the invalidation of acts. XLV. It will not be easily possible for diocesan courts to condemn parties to damages or expenses; for whenever sufficient evidence appears from the investigative process to warrant action against the accused, the appellate judge should refrain from such condemnations, since such evidence is sufficient to exclude the true and proper calumny that is required for such a condemnation. XLVI. The decrees No. 125 of the Plenary Council of Baltimore, concerning the nature of missions, and No. 77. 108, concerning the legal effects of the removal of missionaries from office, are not to be understood as amended or invalidated in any way, except for those matters which have been more recently established concerning perpetual or immovable parish priests. Fragment from a letter from the Sacred Congregation of Propaganda Fide of May 12, 1890, to the Archbishop of Paris, concerning the authority of Eastern Patriarchs outside their own dioceses.... It is the general rule of this Sacred Congregation that Eastern Patriarchs cannot exercise their jurisdiction outside of their own Patriarchates; and consequently, that priests and faithful of any Eastern rite, residing outside of their respective Patriarchates, or even within the boundaries thereof, but who do not have parish priests of their own rite, are subject to the Latin Ordinary of the place where they reside, especially in Latin dioceses. It should be noted, however, that the authority of Latin bishops over Eastern Christians subject to them is not...

[*Latin ed. p. 391*]

APPENDIX I. This pertains neither to questions of ritual, nor to matters concerning the monastic state of those priests who have embraced it. In such cases, always preserving the authority of this Holy Congregation, it is advisable that the Ordinary of the place act either with this Holy Congregation itself, or with the Eastern Patriarch regarding matters of ritual, or with the Abbot General of the monastic order, if the matter concerns the affairs of the monks.

391 Concerning those under their jurisdiction, it does not extend to ques-

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tions, nor to affairs, pertaining to the monastic state of those priests who have already embraced it. In these cases, always preserving the authority of this Holy Congregation, it is advisable that the local Ordinary act either with this Holy Congregation, or with the Eastern Patriarch regarding matters of ritual, or with the Abbot General of the monastic order, regarding the affairs of the monks. From the Encyclical Letter of the Holy Father concerning the Propagation of the Faith, November 8, 1882, to the Apostolic Delegates for the East. Concerning the application of the Mass for the People. His Holiness, Pope Leo XIII, promulgated the Constitution *In suprema* on June 10th of the current year, concerning the obligation of all Bishops to apply the Mass for the People on feast days...

It is not unknown to the Most Holy Pontiff that, according to the decree of Innocent III in the Fourth Lateran Council, *Licet graecos*, and according to the explanation given to it in a Congregation of theologians held in 1631 before Cardinal Pamphili, the better part of the Doctors, not excluding Lambertini himself (Benedict XIV), are of the opinion that the Easterns are not included in the Apostolic Constitutions, except in the following three cases:

1. In matters of faith and Catholic doctrine.

2. Where the matter itself demonstrates inclusion, inasmuch as it is not (1) *Becole, Vol. XIV, p. 529 ad 556.*

Most Holy Lord Pope Leo XIII wrote the Constitution *In suprema* on the 10th of June of the current year (1) concerning the obligation of all Bishops to apply the Mass for the People on feast days... It is not unknown to the Most Holy Pontiff that, according to the decree of Innocent III in the Fourth Lateran Council, *Licet graecos*; and according to the explanation given to it in a Congregation of Theologians, held in the year 1631 before Cardinal Pamphili, the better part of the Doctors, not excluding Lambertini himself (Benedict XIV), are of the opinion that the Easterns are not included in the Apostolic Constitutions, except in these three cases.

1. In matters of faith and Catholic doctrine.

2. Where the matter itself demonstrates inclusion, inasmuch as it is not...

[*Latin ed. p. 392*]

392 APPENDIX I. One law alone, ecclesiastical, but a declaration of the divine and natural law. 3. When, even though the matter concerns disciplinary regulations, the Easterns are expressly mentioned therein. This doctrine of theologians and canonists has not yet received sanction from the Holy See; however, it is certain that the Easterns have, from time immemorial, held the opinion, both theoretically and practically, that they are not included in the disciplinary constitutions, except in the aforementioned manner, and that this their opinion has never been condemned by the Holy See. With this theory established, it is clearly evident first, that all Bishops,

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even Eastern ones, are certainly included in the aforementioned Constitution of the Holy Father, *In suprema*, because it declares the divine right regarding the obligation of the Mass for the people; for by the force of pastoral office, Bishops of any rite are certainly bound, by divine law, to apply it. Therefore, this is not a point of mutable discipline, nor can it be changed or abolished according to different rites, by any contrary custom; which would be nothing other than an erroneous abuse, when it concerns the obligation of Bishops themselves to offer the Holy Sacrifice for the people, least of all if it concerns the number of Masses, which must be offered on each festive day. This number is determined by an ecclesiastical law, in application of the divine law; and therefore, no diversity or dispensation is excluded, according to the different circumstances.

[*Latin ed. p. 393*]

APPENDIX I. 393 Sacred Congregation for the Propagation of the Faith. – Concerning the precedence of Bishops. It is to be written to the Apostolic Nuncio to the Ordinariate of Poland, that the Most Reverend Cardinal Capponi has stated that, in the matter of the precedence of Bishops, attention is not given to the difference between the Greek and Latin rites, but rather to the time of their promotion; and therefore, Ruthenian Bishops ought to precede suffragan Bishops of the Latin rite, if they have been promoted to the episcopal dignity before them. Sacred Congregation for the Propagation of the Faith, Secretariate General, August 24, 1852. Apostolic Vicariate of Japan. Doubts concerning the privileges of the Apostolic Vicariate. In this island (Ceylon), and generally in India, the custom has prevailed of erecting a throne and granting an indulgence of 40 days whenever the Apostolic Vicar celebrates pontifically. Therefore, the following is asked: 1. Whether Apostolic Vicars can have a throne and grant said indulgence, or not; and, if not, the reason why. 2. Whether this custom should be tolerated, for the sake of avoiding scandal. 3. Whether missionaries ought, or can, say in the Canon: "and with our Bishop N. – naming the Apostolic Vicar." Answer: To questions 1, 2, and 3: Negatively. From the letter of the Sacred Congregation for the Propagation of the Faith, February 16, 1867, concerning the privileges of Apostolic Vicars. Apostolic Vicars, since they are not titular Bishops of the vicariate which they govern, are not, by strict law, permitted to enjoy all those honors and privileges which have been granted to Bishops in their territory; therefore, they cannot have a throne in the church, nor wear the great mitre; nor is it permitted that their names be mentioned in the Canon of the Mass. However, if a custom has been established, either by decree or by long-standing practice, that similar practices have been used for a long time, and there is fear of causing astonishment among the faithful if that custom is changed, then the Holy See is accustomed to tolerate such observances. Sacred Congregation for the Propagation of the Faith – General Congregation, January 16, 1797. Concerning the renewal

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of faculties. 1. What is the opinion of the Sacred Congregation concerning the renewal of faculties that have been delayed without fault? 2. To the Apostolic Vicar (of Western Tunkin) the faculty has been granted...

[*Latin ed. p. 394*]

394 APPENDIX I. Regarding the dispensation to be granted in the first degree of affinity, arising from a lawful marriage, even in the direct line, with the following restrictions: however, in secret and in the internal forum. The question is asked whether, by these words "in the internal forum," or, as Father Antoine explains, in the act of sacramental confession, is meant confession to which absolution is immediately joined, or whether it suffices that confession be made in order to receive absolution at a later time, provided that the impediment which caused the delay has been removed and that a considerable time has elapsed. R. To 1. The faculties granted remain valid even after the expiration of the time of the concession, until a new concession is granted. To 2. Negatively, to the first part; affirmatively, to the second. S. C. de Prop. Fide - C. P. pro Syn. 26 Septembris 1821. Vic. Apost. Sutchuen. - Concerning the faculties to be granted to Missionaries exiled. I present to the Holy Congregation four missionaries from this province of Sutchuen, who were recently condemned to exile in distant provinces, where many Christians from this province had previously been exiled at various times. Therefore, these missionaries requested that I grant them the necessary faculties, so that they may be able to perform all the apostolic duties towards the aforementioned exiled Christians, and others who are in those places of exile... Because we are in such circumstances that it is easily possible that other missionaries may be included and sent into exile, and all the missionaries of this province greatly desire to know how they should act in such circumstances; furthermore, because we are deprived of all hope of communicating with the aforementioned missionaries sent into exile by letter, and of sending them instructions and decisions from the Holy Congregation, so that they may act in accordance with them and perform their apostolic duties: therefore, the following is asked: 1. Whether the Apostolic Vicar can grant to missionaries of his district, who have been condemned to exile in foreign provinces, ordinary and extraordinary faculties, so that they may exercise them in the places of exile. 2. Whether, to these missionaries exiled, independently of the faculties obtained from their own Apostolic Vicar, other faculties are granted to them by the Apostolic See itself, as Apostolic Missionaries, especially if it is not certain that those places are subject to another Bishop, or if, due to excessive distance or another impediment, they cannot appeal to that Bishop. 3. What are these faculties, and how should they act concerning those which are usually granted only

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for a period of two years or another definite time?

[*Latin ed. p. 395*]

APPENDIX I. 395> R. In affirmative; sed hoc non potest fieri nisi cum licentia Ordinarii, aut ob gravissimum impedimentum ad accessum ad Ordinarium loci, aut ob absentiam ipsius Ordinarii. Ad 2. et 3. Praevidetur in 1. Sacra Congregatio Concilii, 25 Augusti, 1850. AQUEN. De Episcopo titulari quoad suffragium ferendum. Episcopus mere titularis non habet suffragium decisivum in Synodo Provinciali nisi omnes et singuli Episcopi consentiant; neque praeest ceteris, licet ante consecrationem hoc privilegium acceperit, nec considerari potest ut Episcopus exemptus. Sacra Congregatio Episcoporum et Regularium, 6 Maii, 1864. DUBIUM de Episcopo regulari quoad regulam professam. Utrum et quomodo Episcopus Regularis teneatur ad regulam professam servandam. R. Affirmative, ad praescriptum Constitutionis Benedicti XIII, quae incipit "Custodes"; nempe Episcopus Regularis tenetur observare regulas suae Religionis, quae materiam voti determinant: item tenetur alias regulas et observantias dignitati et officio episcopali non repugnantes eadem obligatione gravi vel levi observare, qua tenebatur antequam assequeretur dignitatem episcopalem: ita tamen ut in peculiaribus casibus iudicium ferre possit utrum cum dignitate et officio episcopali illa conveniant. Sacra Congregatio Rituum, 16 Aprilis, 1886. Episcopus quoad anniversarium suae electionis. Utrum Episcopus teneatur speciali modo celebrare anniversarium suae electionis et consecrationis. Et, si affirmative, quomodo et quibus diebus anniversarium electionis habendus est. R. Affirmative ad primam partem. — Ad secundam: ut satis docet Caeremoniale Episcoporum. — Ad tertiam: dies electionis est illud in quo provisio Ecclesiae episcopalis a Summo Pontifice publicatur in Consistorio.

[*Latin ed. p. 396*]

396 APPENDIX I, Sacred Congregation of Rites, January 30, 1878. Epistles concerning the collection for the Bishop. 1. Whether the collection taken up by the clergy for the Bishop should be announced both on the day of his consecration and on the day of his election. 2. Whether the Bishop-elect can be called by that name on the day when the Letters in the form of a Brief are expedited, by which his predecessor was transferred, or rather on the day when he himself was named as Coadjutor in the Consistory. R. To 1. Affirmative. To 2. The day of election, in the case and for the purpose of the collection to be made by the entire clergy of Marianopolitan, is the day on which the Apostolic Letters in the form of a Brief for a Coadjutor with future succession were given. From the Apostolic Letter of Pope Pius VI, December 9, 1783, to the Bishop of Babylon, concerning the Pallium. The pallium, woven from wool, representing the fleece that the Lord sought when the lost sheep was found and placed upon His shoulders,

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signifies the skin, so that the Bishop, who bears Christ Himself, may fulfill the office of that Christ; and also, by that very appearance, it shows to all that he is an imitator of that good and great Shepherd, who proposed to Himself to bear the infirmities of the flock. Sacred Congregation of the Holy Office, August 7, 1749. – Concerning ordinary and special faculties. The Most Holy Congregation decreed that, in the future, special and extraordinary faculties, previously granted and customarily granted for a time to Archbishops, Bishops, and Prefects of Missions, shall not be confirmed unless, with the presentation of more recent decrees of those grants or confirmations.

[*Latin ed. p. 397*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF CONCORD. ON MATRIMONY, August 29, 1891. Session 24, chapter 3, Concerning the reform of marriages. The conjugal bond was celebrated on October 23, 1881, by the solemn ecclesiastical rite of Joseph Pius Muzzin, a widower, and Puella Maria Angela Martin, both of the Diocese of Concordia; I say ecclesiastical rite alone, because they did not enter into it civilly. The bride, already for many months before the celebration of the marriage, began to fear that Joseph Muzzin might be impotent, because she had heard the first wife of Joseph Muzzin lament that her husband was impotent. And what she feared came to pass. For on the first night, Muzzin made every effort to consummate the marriage with the actress Maria Angela, but in vain. Seeing this, Maria, indignant, said to him: "Therefore, it is true that you are impotent! And in this way you have betrayed me?" And the groom replied: "The matter is now perfected; and there is no remedy." But on another occasion, rebuked by the bride, he said: "If you are not content, choose, secretly, another man who pleases you, who will make you happy." In the following days and nights, for approximately fifty-five days, both of these betrothed attempted to consummate the marriage, always in vain. All those present and the neighbors were astonished to see Maria afflicted with a great disturbance of mind. Finally, she revealed this to her parents, who brought her back to her paternal home. Maria consented to the wishes of her parents, and gladly abandoned her husband. Wishing to be married, she appealed to the episcopal court of Concordia, which, after having completed all the acts of the process according to the requirements of the law, and having seen and examined everything, issued a judgment on the SUMMARY OF THE FACTS.

[*Latin ed. p. 398*]

398. CONCORDIA! Favoring the marriage, declaring its validity. The actress appealed to the Holy See. Therefore, the procedural acts were transmitted to the Holy Congregation. A Synopsis. First, it is to be noted, said the

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Consultor, that the delegated judge of the episcopal court of Concordia issued this judgment: "I judge that there does not exist impotence in the man, and therefore such a marriage must be considered indissoluble." After this judgment, the Bishop of the same Diocese, during a pastoral visitation of the parish of Tiezzo, where Joseph Muzzin was born and resides, on March 20, 1886, received, outside of a formal judicial proceeding, the confession of the aforementioned Joseph before witnesses, stating: "To clear my own conscience, I declare that I have been impotent for the marital act, and that this impotence still exists, both relatively and absolutely; with regard to my first and second wife." He repeated this declaration under oath before the spiritual administrator of his parish. With these premises, the Consultor continues: although, from the examinations, it appears that there does not exist impotence in Joseph Muzzin, indeed, it appears that his marriage with the actress has been consummated; nevertheless, from all the testimonies taken together, and from the extrajudicial documents and conjectures, the contrary is sufficiently demonstrated: consequently, the alleged impotence is established. The first part of this thesis is most clearly evident to the reader from the depositions of five doctors in the art of medicine, who legally examined the genitals of Joseph. These, having first sworn an oath, affirmed unanimously: "Joseph is endowed with a healthy and sound constitution, and his genitals are perfect." The midwives, who examined the body of the actress under the sanctity of oath, testified: "The hymen of the bride was completely removed, so that it can be maintained that the marriage has already been consummated." Therefore, from the examinations, it appears that there does not exist such impotence in Joseph, indeed, his marriage has been consummated. THE OPINION OF THE CANONIST.

[*Latin ed. p. 399*]

CONCORDIEN. 399. Considering all the elements together, as contained in the procedural records, and the extrajudicial evidence and conjectures, it is sufficiently established that the man was, in fact, impotent to consummate the marriage. It should deceive no one that, in judging such cases, the criterion should not be formed from a single act, or fact, or statement taken separately, but from the totality of all that is contained in the procedural records, and from the intention, as far as possible, with which the witnesses and even the spouses themselves spoke. Indeed, mere observations are of no certainty, since they are entirely deceptive. For even the doctors in the medical art, after affirming that the genitals of the man are perfect, immediately add: that his ability cannot be judged, because frigidity or a lack of erotic sensitivity may be present. Similarly, there may be more causes of defloration in a woman, and more opportunities for a young woman to fall into sin, especially at a time when she lives with such a husband, even though the husband himself is unable to have relations with her. Angela Maria, or the actress herself, revealed the assaults committed upon her,

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both by her own hands, and by the hands of her own husband; and perhaps she did not wish to reveal that she had had relations with another man, being encouraged by the husband who gave the woman the opportunity to have another man, provided she did not leave his house. Furthermore, the midwives, from the absence of the hymen in the actress, believe that they can conclude with certainty that her marriage with Muzzin was consummated. But such an opinion deceives them: according to what is taught about the hymen in the medical and surgical arts, as experts in Barzellotti's *Opera medica, legal*, book 1, section 28; Zaccharias, book 4, title 2, question 1, number 15; and Mataxa in his *Opera anatomica*; also Kenke in his *Medicina legal*, section 176. Similarly, other individual elements taken separately cannot certainly conclude regarding such impotence and lack of consummation, as no one fails to see. Therefore, the totality of all depositions, and of the additional evidence, and conjectures and presumptions, which are present in the case, must be considered.

[*Latin ed. p. 400*]

400. DEGREES. And first, we have that the husband has declared that he has not consummated the marriage, even though he has attempted to do so on several occasions. Similarly, all the witnesses highly commended the virtue of Angela Maria, and unanimously testified that she was of complete and unwavering faith. Let us now hear what the actress herself declared under oath. When questioned by the Judge, she responded: that she had attempted the consummation of the marriage at least six times during the entire time she lived with her husband, but that each time the attempt was unsuccessful due to the husband's defect. This testimony of the actress perfectly corresponds with the confession of Joseph himself. We therefore have the sworn confession of both spouses regarding impotence, and regarding the lack of consummation of the marriage, according to Chapter *Laudabilem de frigido, et malefic*. We also have that the actress immediately complained, according to Chapter *Accepisti de frigido, et malefic*. To this is added that Angela Maria, or the actress, had no other reason for leaving her husband, by whom she was loved by all. Furthermore, it is added that the husband, in order to prevent his wife from leaving him, proposed on three occasions, even in the presence of the actress's mother, that she have relations with another man. But if Joseph had been capable of intercourse, he certainly would never have made such a proposal to his wife; indeed, even the slightest suspicion of infidelity would have inflamed him with anger and fury towards his wife. Therefore, from the confession of both spouses, and from the aforementioned statements, it is clearly concluded that Joseph is impotent, and consequently, his marriage is unconsummated. To the confession of both spouses, we add the testimony of seven witnesses, relatives and neighbors. Therefore, considering these testimonies of the seven witnesses, and the aforementioned sworn confession of both spouses,

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along with the noted additions, the matter rightly falls under the jurisdiction of Chapter *Laudabilem de frigido, et malefic*. If, however, both declare that they have never had intercourse with each other, and with the testimony of seven witnesses, relatives or neighbors, of good reputation, if relatives are lacking, let each of them, under oath, declare, according to the sacred Gospels, that they have never become "one flesh" through carnal copulation; and then it appears that the woman is eligible to enter into a second marriage.

[*Latin ed. p. 401*]

CONCORDIEN. 401 This impotence of Joseph Muzzin is PRIOR. He himself confessed that he was impotent even with his first wife. Antonia del Bianco, the mother of Joseph Muzzin's first wife, and the father of said first wife, both of the same Joseph, confirmed this under oath. So too, Mary Calderan and others. Therefore, it cannot be doubted that this impotence of Joseph Muzzin was prior in relation to his second marriage with the actress. It is ABSOLUTE; for he has experimented with two women, but always in vain. It is PERPETUAL, since no remedies have availed him, as Joseph Muzzin himself testifies. If Muzzin, at the flourishing age of thirty-five, remained impotent, despite the application of suitable remedies, it can be affirmed with moral certainty that he will always remain so, or impotent, as he advances in years. Since these things are undoubtedly the case, it must be concluded that the marriage between Angela Mary, the actress, and Joseph Muzzin is null. It is not new that a woman has been found to be corrupted, and her marriage has not been consummated by her husband: other cases of this kind have occurred, and in this matter, the Sacred Order has issued judgments either for the nullity of the marriage, or for a dispensation from a marriage that was valid but not consummated, as in one case in Corduba, Dispensationes Matrimonii, 20 September 1760; in Naples, Dispensationes Matrimonii, 15 September 1827, and another in Naples, concerning nullity, or a dispensation from a marriage, 5 July 1862. Let me not digress further, but I wish to reiterate that, besides the sworn confession of the husband, corroborated by the sworn testimony of a seventh witness, there are other supporting elements that provide moral certainty of the lack of consummation, such as extrajudicial confessions made by the spouses before their separation; the woman's declarations, made a few days after the celebration of the marriage, and her recourse to the parish priest; the husband's confession made to the same parish priest; and bad suggestions made by the husband to his wife, as in Act, Volume XXIV, page CGLXXXIII, 26.

[*Latin ed. p. 402*]

402 CONCORDIEN. that he should abandon her: the separation having occurred due to the man's ineptitude for copulation; the depositions of the

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parents of the aforementioned Mary Martin. All of these things, if carefully considered, not only reveal that the marriage was not consummated, but also exclude any collusion between the spouses. OPINION OF THE THEOLOGIAN. This theologian states that the marriage was not, in fact, entered into, due to the impediment of impotence, on the part of the man, as demonstrated not obscurely by the expertise of physicians. Indeed, according to both natural and positive law, impotence renders a marriage null. For the object of marriage is the procreation of offspring; if nature has rendered either the man or the woman incapable of procreation, so that marital intercourse can never be had, then divorce may be permitted to them by the authority of the Church. Thus it is established in the law, chapter Fraternitatis, title De frigid, et maleficiis, and confirmed by the Council of Trent. Joseph Muzzin suffers from impotence, preventing him from intercourse; therefore, there was no marriage between him and Mary Martin. The expertise of physicians has clearly declared this kind of impotence. The theologian considered it necessary to preface his statement so that the expertise of the physicians might be understood without any ambiguity. Impotence is defined as the inability to have perfect carnal intercourse, which occurs through the penetration of the woman's vagina and the emission of semen into it. Thus teach Sánchez, book 7, Disputation 92, number 7, and Pirhing, op. cit., number 1, with the common opinion of canonists. This inability is either natural or intrinsic, or accidental or extrinsic. The former arises from a defect of nature, the latter from the actions of a man. Reiffenstuel, *Ius. can.*, volume IV, in the book of decrees, title XV, De frigid, et malefic. But perpetual impotence, whether natural or accidental, which cannot be removed without danger of death, or by lawful means, dissolves a marriage, provided that the impotence existed beforehand; nor does absolute impotence, which applies to all persons of the opposite sex, constitute an impediment; but rather, temporary and subsequent impotence. Impotence, however, with respect to a particular person, does not constitute an impediment with respect to all persons, but only with respect to that person with whom intercourse is impossible. This opinion is very common among canonists.

[*Latin ed. p. 403*]

CONCORDIEN. 403 How is such impotence to be determined? 1. By the expertise of physicians, 2. by a three-year trial period, 3. by the confession of the spouses, confirmed by oath, with the testimony of most trustworthy witnesses. - In this paragraph, we speak of the first and second methods, applied in this case. The delegated judge, because of the poverty of the spouses, requested physicians and midwives of the civil hospital of *Portus* (Oporto) to examine the bodies of the spouses and to report their findings. Regarding the man, all the physicians agree that the genital parts are small, but perfect, and that externally there appears to be nothing dis-

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ordered, and therefore, they seem suitable for copulation, unless there is present frigidity and a lack of erotic sensitivity. Furthermore, although the physicians may appear to differ somewhat in their judgment, they all agree that Joseph is, in fact, impotent. It is certainly doubtful whether this impotence is permanent and incurable. The physicians were unaware that witnesses had testified that Joseph had used remedies to strengthen his weakness, and that these had been of no benefit to him. However, since the physicians are in agreement in defining Joseph's impotence and in assigning the cause of his inability to have intercourse, they unanimously affirm that Joseph is semi-erect. The state of semi-erection is nothing but a sign of frigidity, as physiologists commonly teach. Onanism produces a weakness in the generative organs, but the cause of this deficiency remains entirely hidden. Given the evident fact that Joseph is unable to have intercourse, – even though the generative parts appear perfect externally, no other reason can be assigned except frigidity, of which semi-erection is the most certain sign, or a lack of erotic sensitivity; frigidity is neither inherited nor induced, but is inherent in the natural constitution of the individual. But, assuming that Joseph himself has confessed to having indulged in onanism, I believe it must be said that frigidity cannot ever be concealed by the weakness of the parts. If he is impotent at the age of thirty-five, what will become of him as the years pass? Indeed, he has not found a woman who would wish to enter into a civil marriage with him, as the bishop himself testifies.

[*Latin ed. p. 404*]

404. CONCORDIEN. It is found in law that, according to the decree of Celestine IV, the chapter "Laudabilem" and the chapter "Requisisti" state that, from the time of the celebrated marriage, if frigidity cannot be proven beforehand, they should cohabit for three years. Not only has the frigidity of Joseph been proven, as we have said hitherto from the testimonies of the physicians; for they themselves admit to his impotence, although, with the exception of the first expert, they offer a faint hope that, if the causes are removed and remedies are applied, it might perhaps be cured; but also, through three years of cohabitation with his first wife, his impotence was demonstrated with the death of his wife, as he himself confessed. The theologians of Salamanca believe that frigidity is perpetual (vol. II, Tractate IX, chapter XII). But in this case, the impotence is certainly certain; it is doubted whether it can be cured. The physicians maintain that it is more probable that it cannot be cured. Therefore, is this kind of impotence perpetual or temporary? If such an infirmity were temporary, there would be greater probability of recovering his virility; but since, on the contrary, the hope of recovering his power is almost nil, I believe it is proper to conclude that the defect is permanent. Indeed, Joseph, although it is morally impossible to remove the causes of his weakness, because the habit is converted into nature, used remedies and removed the causes for a year before

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he took Mary Martin as his bride, for he was trying to dispel the widely spread fame of his impotence; especially since he was questioned about this defect by both Mary and by her mother; and since nothing availed him, and he could not unite himself with another bride, where is the hope of the physicians, however faint? But the words of the woman who ingenuously testified must be considered: "alquanto eccitata," that is, "somewhat excited." This happens in all frigid individuals, and such excitement is useless, for it cannot be transmitted to the woman's vagina. Even boys suffer from the slightest alteration of their flesh, which clearly manifests an impossible union. But what is to be said about the defloration of the woman? The husband states that he perhaps consummated the marriage twice; the woman denies it. To whom should credence be given? That slight excitement, of which...

[*Latin ed. p. 405*]

CONCORDIEN. 405 – The woman, Joseph, defined by the physicians as semi-impotent, was considered to have completed the marriage. We must recall the examination of the woman's body made by the midwives, in testimony of truth. The midwives unanimously testified that the hymen was torn; thus, it could be said that the marriage was consummated; and that this tearing could not have been caused by the woman's fingers, nor by the husband's. But, on the contrary, Mary Martin, under oath, testified that her husband had defiled her with his fingers, causing her great pain. From the testimonies of both the husband and the wife, it is understood that Joseph exposed Mary to the dangers of incontinence. Agitated by the impulses of concupiscence, and having remained with her husband, and having been urged by him to lie with another man, it seems most probable that she was defiled; and perhaps by the man to whom she was betrothed by civil marriage. But when questioned by the Bishop, Doctor Martelli responded whether the defloration of a virgin should be attributed exclusively to the marital act or to any cause that might bring it about, and he answered that another cause, besides the act of copulation, could tear the hymen and scatter its remnants. The same doctor testified that Mary Martin, after a year of civil marriage, was pregnant in the year 1886, for she "took a husband in the year 1885." If Joseph had been capable, the bride would already have conceived. The husband, he said, having consummated the marriage, was sufficient to make his wife pregnant. This also holds as an argument to refute the opinion of the midwives mentioned above. For if the marital act had taken place, Mary Martin would at least have given some indication of her pregnancy, having been made pregnant by Joseph. From the testimonies of the spouses and witnesses, it is clearly apparent that the marriage is null; for in matters of the impotence of the husband, the witnesses are more reliable, when their ingenuous confession is manifested. To me, the confession of the bride, which we found first, seems the most

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ingenuous. She praised the family of her husband, and the affection with which he pursued her; the same husband testified. She stated that before her marriage with Joseph,

[*Latin ed. p. 406*]

406 CONCORDIEN. Muzzin received information from his nephew concerning Joseph's frigidity, and his mother-in-law, upon returning home, informed her own daughter of this matter. He testified that his wife had given her consent for him to be examined by physicians. If Mary had possessed some shrewdness, or rather, cunning, she would not have uttered these words, for they demonstrate the conviction of her fiancé's ability to enter into marriage. However, he never proceeded to the act of an unnecessary examination. Indeed, from the words he pronounced before his fiancée, a contrary persuasion is deduced; for he said that he would not seek her by force or fear, and that if the marriage were denied to him by Mary, the servant, for his sake, would bring a woman into the house, rather than take another bride. If he were truly capable of coition, he would have immediately abandoned his fiancée, and would have accepted the reproaches of his fiancée and her mother against the decency of his condition. Therefore, he confessed his impotence. It is not surprising that Joseph touched his fiancée with his hands, for even though he was frigid, he was not entirely immune to concupiscence. Therefore, impelled by passion, he touched her so vehemently that he tore her hymen. This circumstance agrees with the opinion of the doctor, Doctor Martelli, mentioned in the preceding paragraph, which explains the defloration of a woman. Joseph seemed to desire to retain Mary Martin as his servant, for he offered her the advice of marrying another man, as the fiancée herself confessed, and as he himself confirmed shortly afterward. But let us also hear the testimony of the fiancée; she said that with her first wife, she believed she had consummated the marriage, but she could not assert it. If she had consummated it, she would have had the consciousness of consummation. But her first wife told her parents, as they themselves testified under oath: that her husband was entirely unfit for coition, while her first wife lamented that she suffered from a stomach ailment. But the hidden cause was the continuous pollution of the woman by the man's fingers, whereby a flow of blood was drawn to the upper part of the body, from which irritation was transmitted to the stomach, and the blood, which was meant for generation, permeated the entire lung tissue, affecting the pulmonary vessels.

[*Latin ed. p. 407*]

CONCORDIEN. 407, having vomited profusely, expelled something from his mouth, and killed a woman. Subsequently, the husband recounts the events that preceded the marriage with Mary Angela Martin, and what he recounts perfectly agrees with the testimony of his wife. The

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husband confirms his wife's confession of his impotence with his first wife. The husband himself testified under oath regarding the good morals of his wife, and declared that he loved her, even though he was far from her. Therefore, it is clearly evident that there was no cause for separation other than the husband's impotence. Finally, Joseph confessed his inability before the parish priest, long after the judicial deposition. Most Eminent Fathers, moral certainty, and not physical certainty, must accompany the judge's criterion. The evidence presented, I believe, is sufficient to produce moral certainty in the mind. What will become of the woman who, having already lived in concubinage under the sanction of an unjust law before the civil magistrate, has contracted marriage? If, indeed, Joseph suffers from impotence that is antecedent and absolute, then you should open the way for the wife to obtain ecclesiastical validation of the marriage.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE. Mary Martin, being 22 years of age, married Joseph Pio Muzzin, who was 33 years old, on October 23, 1881, observing the sacred form of the Council of Trent; but after living with her husband for approximately fifty days, she declared him incapable of marital relations and bid him farewell. On December 13, 1882, she petitioned the episcopal court to declare the marriage invalid; but with a most unfortunate omen. For neither Concordia, nor any other judge, can declare the marriage invalid on the basis of the husband's asserted impotence, since four of the five medical practitioners who examined Joseph do not have certain knowledge of any inherent impotence. A learned theological consultant believes that the aforementioned four doctors still hope for a cure for Joseph's impotence, because they do not know whether Joseph has taken any medications to strengthen his

[*Latin ed. p. 408*]

408 CONCORDIEN. has employed unsuitable methods, as testified by Mary. Does this not suffice to consider the condition incurable? And what if Joseph himself can hope for a cure through this very recovery? Furthermore, there is no need to resort to a dispensation regarding the valid marriage. Besides the fact that Mary has not at all requested this, the testimony of the midwives is contradicted, who, with one voice, state that the hymen was torn, and that the touch of fingers could not have caused such a tear. Moreover, there is no suspicion that Mary has lost her virginity through adultery. For all her witnesses commend her good morals, among whom is Angela Villalta Calderan, who was raised from the sacred font. Distinguished theologians and canonists place their trust in the confession of the husband, confirmed by an oath sworn before seven witnesses. However, they do not consider that, sometimes, both the spouses and the seven witnesses can deviate from the truth. I send Joseph, who, led by I know not what faith, loudly and with good intentions sought to persuade everyone of his impotence, after having testified, both in court and outside of it, that

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he had been with Mary more than once. Mary, in order to declare Joseph impotent, reported that he had told her that he wished to take another wife, and that he had said this before Dominic Villalta, his own mother, and Peter Moras. Indeed, Peter Moras swears that he did not hear these words. And since we are speaking of Peter Moras, observe with what ingenuity this man recounts things that are not at all similar to the truth: when I went to ask for Mary Angela, her father replied that he was willing to give her to Joseph in marriage, provided that he himself was healthy and capable of marriage. Does anyone believe that the father of the actress, a simple man, would have considered a matter so closely related to the present controversy, even though it is a difficult matter to contemplate, and would have spoken about it with a potter? I conclude: the judgment and testimony of experts and midwives are diametrically opposed to the actions taken in Aversa.

[*Latin ed. p. 409*]

CONCORDIA. 409. The profession of spouses, and the testimony of witnesses, cannot be received by those with blinded eyes. Having stated these premises, two following propositions were to be examined. Doubt I. Whether there exists a nullity in the marriage in this case? And, to the extent that it is negative. II. Whether it is necessary to consult with the Most Holy [Congregation] regarding a dispensation concerning a marriage that is valid but not consummated in this case. RESOLUTION. The Sacred Congregation, after deliberation on August 29, 1891, decided to respond: To I, it will be provided in the second [part]. To II, affirmatively, forbidding the man from entering into other marriages without the consultation of the Sacred Congregation. ROMA. COMPENSATION. On September 12, 1891. Session 25, chapter 1, concerning references. SUMMARY OF THE FACTS. In the year 1716, the priest John Angelus Magnoni, from the town of Cannara, in the diocese of Assisi, who died with great praise, having established various pious bequests, designated the chapter and canons of Saint Eustachius as his heirs. In Rome, according to the law in force, it was decreed that from the entirety of the inheritance, a canonical position should be established in the aforementioned collegiate church of Saint Eustachius, under the name of the Magnoni canonry. The pious testator reserved the right to nominate the canon first; subsequently, he delegated the same right of nomination to the chapter of Saint Eustachius. Currently, this canonical position has been held for many years by the priest Aloysius Ciocchetti, who, towards the end of the past year, asserted that he had had to incur various expenses for the preservation of the rights and freedom of the benefice, amounting to more than one thousand one hundred [libræ].

[*Latin ed. p. 410*]

In the year 1869, the Sacred Congregation decreed that, with its favor,

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and considering the benefit held by it, the restitution of that sum of money should be decided. When the diaconate of the Saints Eustachius and his Companions was vacant, the Cardinal Emus, Vicar in the city, was requested to, after hearing the chapter, deign to reveal the sentiments of his mind concerning this matter. The Vicar Emus, acting according to custom, transmitted to the canonical Ciocchetti the opinion of the chapter, which was not favorable, and considering that no proof was presented, neither by the priest who was making the request, nor by the chapter, he expressed his opinion, "so that all rights may be clarified, and thus room may be made for justice."

A summary of the arguments:

The speaker first points out that, according to law, the holder of an ecclesiastical benefice is considered equivalent to a usufructuary, and therefore, he is not obligated to bear expenses that exceed the simple and ordinary administration. *Boulant. De peculio clericorum. Leg. 3 proel. 2* *ff. de usu fructus;* especially in the case where such expenses are said to have been incurred in the preservation, rights, and freedom of the benefice.

With these premises in law, the speaker recounts that in the year 1869, a question arose before the Sacred Order concerning the choral duties, according to the respective anxieties of the canons and the beneficiaries; it was necessary for the priest Aloysius to defend the rights of his canonry, and thus to bear expenses that amounted to the sum of eighty-eight hundred livres. Similarly, in the year 1865, a dispute arose concerning precedence and other canonical rights; the priest who was making the request had to participate in a judicial dispute at each level of the prolonged appeal, and thus to bear judicial expenses, which, including the fees of the defenders, reached the sum of two hundred and fifty hundred livres.

In the year 1879, the speaker continues, the canon Magnoni, in order not to incur penalties imposed by the founder of the benefice against those who were negligent, was forced to take legal action against the Chapter of Eustachius, and from that action, sums were paid to the canonry of Magnoni.

[*Latin ed. p. 411*]

In ROMA, the matter concerning the reimbursement of expenses is being addressed. This cause was vigorously debated before the Sacred Order in ROMA on June 21, 1879, and it was determined that the sum to be repaid from his own funds was not less than eighty-eight promissory notes. According to the law governing the foundation of the canonry in question, those who benefit from its augmentation are obligated to contribute: 1. one-third of the revenues of the vacant benefice; 2. one-third of the proceeds during the absence of the beneficiary, for any reason whatsoever. Indeed, on August 11, 1873, the priest Ciocchetti petitioned both his predecessor in the benefice, Bishop Valenziani, and the Most Holy Prince, submitting

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a petition with humble supplication, requesting absolution or a remission of the debt. However, by a decree of the Sacred Order on December 20 of that same year, the matter was settled through a composition, and now, the priest Aloysius demands reimbursement of the expenses incurred, amounting to a total of four hundred and fifty promissory notes. Furthermore, the patron of the priest Aloysius recounts that in 1883, he was brought before the civil court by a certain Magnoni, the patron of the benefice, as the defendant, in order to compel him to relinquish at least half of the canonry, which the plaintiff had requested to be "freed" [lo svincolo], according to its lay nature and quality. The matter dragged on for a long time; finally, by virtue of a decree from the Royal Ministry, which is known as "di Grazia, Giustizia e dei Culti," the ecclesiastical nature of the benefice was confirmed, and it was declared that the canonry was immune from suppression; however, the action to claim the canonry, favored by a certain Brunamonti, was denied. Nevertheless, the negotiations before both judicial and administrative authorities, through intermediaries, resulted in significant expenses, and the current beneficiary also demands reimbursement of these expenses. Magnoni, the possessor, amounts to one hundred and fifteen promissory notes. Therefore, the speaker concludes, it is clear that the priest, like a vessel overflowing, must be reimbursed for all the aforementioned expenses, either for the preservation of the benefice, or for the fulfillment of the rights of the canonry held by Magnoni, and that these expenses, in total, amount to more than one thousand promissory notes, as evidenced by the documents presented in the proceedings.

[*Latin ed. p. 412*]

412 ROMANA is ailing. It is added that, contrary to the petition of the possessor of the benefice, Magnoni does not have an opponent. Indeed, the Eustachian Chapter, as already mentioned, having been consulted on the matter by the Eminent Vicar of the City, in its response, although it showed itself offended towards the priest Ciocchetti, declared that it was "as if estranged from those affairs." Nevertheless, disregarding these things, the advocate asserts that the Chapter's observations against the petition of the priest Aloysius have no validity. He points out, first, that it does not concern him whether the possessor has a right to recover the expenses in question; indeed, although that right was not expressly prescribed in the terms established by law, he could always and at any time order the exercise of that right. Furthermore, the advocate argues that, considering the adverse outcome of the judgment of restitution concluded in 1879, it is not necessary or useful to initiate that judgment again in order to deny the reimbursement of expenses today; rather, in every case, prudence and foresight suggested that the possessor should be cautious and vigilant in safeguarding and defending his rights, lest he incur penalties against those negligent individuals instituted by the founder of the canonry. Finally, with regard to the

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expenses incurred for the freedom and preservation of the benefice, whatever may be the opinion of the Eustachian Chapter, recently expressed, regarding the nature and quality of the canonry, the advocate states that the possessor was summoned before a civil magistrate by a certain passive patron, and that he had the right and duty to defend himself and to vindicate the freedom of the benefice. Moreover, the advocate adds that the authority of the priest Ciocchetti declared itself in favor of the intention, and confirmed the canonry as being immune from suppression.

WHAT IS OBJECTED TO THE PETITION. However, on the contrary, several things could be observed, both in fact and in law, against the petition of the canon Ciocchetti. And first, it should be noted that the Eustachian Chapter, although it does not involve itself in the present question, since it has no interest in the goods granted to the possessor of the canonry, Magnoni.

[*Latin ed. p. 413*]

ROMANA 413: Separately from the chapter, it is administered; nevertheless, when questioned by the Eminent Cardinal, the Vicar of Rome, by order of the Holy Office, the Canon Ciocchetti expressed a completely contrary opinion. He is astonished, above all, that the return of funds should be demanded after so many years, and that this should occur now, when, after the recent complete renewal of the chapter, all those who could have presented something regarding the asserted legitimate right to expenses, or regarding certain circumstances of the case, have disappeared. Furthermore, examining the words of the Canon Ciocchetti individually, he states that, in several judicial cases brought by him, no canonical benefit has been obtained, nor could it have been obtained; either because the necessities did not appear, or because they lacked solid reasons. Specifically, he notes that in the case before the Sacred Congregation of the Council, which was brought in 1879 against the chapter, the petition of the aforementioned canon to obtain restitution was rejected by a unanimous judgment, and moreover, a clause was added to completely exclude it. Finally, regarding the expenses that he claims to have incurred, he says that the chapter did not foresee the necessity of these expenses in order to preserve the benefit from fiscal depredations. He adds: "It was incumbent upon the chapter to oppose the 'svincolo'; it was not incumbent upon the investiture, who, if he made useless expenses of his own accord, must now bear the consequences." The chapter, to which this question is now brought to its attention for the first time, believes that the ecclesiastical nature of the Praebenda Magnoni could have been easily proven, without the assistance of external legal consultants, without expenses, and above all, without prejudice to the praebenda. However, in the matter of law, it must be noted that we are dealing with a diminution of the endowment of the benefice, and therefore, this is a matter which, being so hateful to the law, is not usually granted except

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with very serious and well-proven reasons. But the Canon Ciocchetti, as the one asserting, bears the burden of proof; and, as the Cardinal Vicar of Rome writes, he "did not present anything to prove," and therefore, there appears to be a place for the application of the law in chapter 2 concerning settlements: "regarding the settlement of such debts..."

[*Latin ed. p. 414*]

414. The churches of ROMANA are not bound: "and those which Innocentius decrees in chapter 4, concerning false accusers: 'that the convent is not bound to answer anything for these; unless, perhaps, it has manifestly proven to be to the benefit of the house itself.' And indeed, since the restitution of such expenses must be equated to the alienation of the goods of the benefice, it follows, besides the apostolic approval, that the necessity or utility of the Church must be required, neither of which, according to the words of the Eminence of the Vicar and the report from the chapter, appears to have been demonstrated. But even if it were shown that the necessity and utility of the expenses made by the canon Ciocchetti were established, it perhaps would not be permissible to conclude that he could recover the large sums of money he paid out. The Saint teaches, citing a certain resolution of the Sacred Congregation of Bishops and Regulars of April 28, 1865, that "in practice, the rule stated above is observed, namely, that only those debts which were contracted with the formalities of the law are considered to burden the benefice and, consequently, also the successors." *Praelect. lib. III tit. De solut.* Therefore, since the canon Ciocchetti carried out everything on his own initiative, it would seem that he cannot obtain the restitution of expenses to the detriment of the benefice and its successors. With these considerations in mind, the purpose is to clarify the doubt: Whether and in what amount there exists a credit for the canon Ciocchetti, so that there may be a place for the restitution of the same upon the goods of the benefice in this case.

RESOLUTION. The Sacred Congregation, having considered the matter, decided on September 12, 1891, to respond: Negatively in all respects, and furthermore.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Unless there are very serious reasons, a reduction of the endowment of benefices is not usually granted; for this is repugnant to the law.

II. The Church is not bound to the payment of debts, nor to the restitution of expenses, unless it has been demonstrated that these were useful and necessary, and that they preceded the apostolic approval.

[*Latin ed. p. 415*]

ROME, March 4th. When the utility and necessity of the expenses for

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which restoration is requested have not been demonstrated, and when prior approval from the Apostolic See has not been obtained, the petition was rightly denied. LIEGE MARRIAGES, September 12th, 1891. Session 21, Chapter 1, Concerning Reforms. On September 4th, 1871, in the Diocese of Liège, John Baptist Gervais and Antonia Halkin, before the parish priest and witnesses, entered into marriage, observing the form prescribed by the Council of Trent; the man, because he certainly loved the woman, and the woman, because, lacking a dowry, she recognized that the man possessed sufficient resources. Approximately a year later, during which time they performed their marital duties almost daily, the woman abandoned the man due to family quarrels and disagreements. However, after two months, harmony was restored, and they resumed living together maritally, as before, until, with renewed arguments, the man himself deserted the woman; this occurred approximately six months after the reconciliation. Thus, after the second separation, the man began to cohabitate with another woman, and indeed so openly that Antonia Halkin was aware of it, and therefore she petitioned the civil government for a divorce, on the grounds of adultery. But she learned through experience that she could not long remain without a husband. Consequently, fifteen years after the separation, she considered resolving the matter of her marriage before the Church. To this end, she approached the ecclesiastical court of Liège, in order to prove that her marriage to John Baptist Gervais had been null and void on the grounds of the man's impotence. The episcopal court heard the case; however, it rendered a judgment against the woman, clearly demonstrating that neither the lack of consummation nor any grounds for a dispensation were established. Indeed,

SUMMARY OF THE FACTS.

[*Latin ed. p. 416*]

416 LEODIENSIS. [The case] states that, even if it concerned the non-consummation of the marriage, a dispensation would nevertheless have to be granted in this case. Not agreeing with this, the woman appealed to this Sacred Congregation, believing that she could certainly obtain what the episcopal court had openly denied. Therefore, the present question is entirely about whether, based on the facts presented, the judgment of the Leodiensis court should be confirmed or otherwise. A Synopsis of the Arguments: All the arguments clearly indicate that the judgment should be confirmed. For if the matter concerns the impotence of the man, we have expert physicians who, after examination, either definitively exclude it. "I found no certain sign of impotence in the man," says Dr. Deggeller. Moreover, Dr. Beblot adds, "neither physically nor morally, are there certain signs of impotence apparent." And although Dr. Snijers asserts that the examination he conducted, although canonically sufficient, was not

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scientifically complete; nevertheless, he himself admits that he found no certain signs of impotence in the man, either physically or morally. But not only the expert physicians, but the woman herself excluded the man's impotence, when she requested a civil divorce on the grounds of adultery; for an adulterer cannot be impotent. But, I ask, how can the woman, long after the separation, declare the man to be impotent, when she did not acknowledge him as such during the marriage, at a time when they were together almost every night? And it should be noted that at that time, the man reproached the woman for not being capable of retaining the seed. And the woman neither denied this, nor did she refute the reason given as being due to the man's impotence. Indeed, the ingenuous woman now says, "I did not notice this, because at that time I was ignorant of such things." And who is it who was ignorant of such things? She, that woman, who perfectly understood the necessary condition of the male member, and who judged the manner of the marital act to be perfect or imperfect: how could she be ignorant of such things?

[*Latin ed. p. 417*]

LEODIEN. 417. The woman, urged on by the man, sought to achieve a more expeditious union, but she was ignorant of certain things, which she has never admitted, namely, that she was not satisfied with the marital act, neither with the man, nor with the woman, nor with others, even family members. Indeed, I know that the woman attributed the man's impotence not to any substantial and intrinsic defect, but rather to an external impediment, namely, a hernia, with which the man was afflicted. And it is astonishing, most wise judges! Today, the woman knows that the man had a hernia, although she completely ignored it when they were together. She now says that the union was imperfect, either because the man's hernia prevented the virile member from entering, or for some other reason. And yet, when asked whether she had noticed this impediment during the act of copulation, she answered in the negative. And what is more, she confesses that she did not notice it even when she was trying to consummate the marriage. Therefore, either the woman is lying when she claims to have completely ignored the man's hernia; or, it must be said that she was such a person that she was not capable of fulfilling the marital act. And indeed, this is what expert physicians say: who, having examined the man's hernia, which has even increased in size since that time; nevertheless, they conclude that it could not have prevented copulation in any way. Therefore, if the question is raised - Whether there is evidence of the man's impotence in this case - there seems to be nothing to say other than: - No. Let us now see whether there is evidence of the lack of consummation. As is well known, the lack of consummation can be proven by three arguments, namely, by the testimony of the parties, by the examination of the woman's body, and by the testimony of a seventh witness. However, none of these

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proves that the marriage was not consummated. Not the testimony of the parties; for while the woman affirms under oath that there was no true union, the man, on the contrary, affirms with the same sanctity of oath that the union was perfect. Therefore, nothing can be concluded from such testimony. But what about the examination of the woman's body? Expert physicians unanimously state that the woman's genitalia were in a normal condition, *in iis conditionibus r e leía, Tom. XXIV. fase. C OL XX XIII. 27*.

[*Latin ed. p. 418*]

418. LEODIEN. It is possible for a marriage to be valid even if carnal union has not taken place in the manner that is typically expected. It should be noted in this testimony of the physicians that they have presented a comparative, so to speak, judgment, namely, after examining the genitals of both the man and the woman. It is known that it can sometimes happen that a man, although capable of intercourse with one woman, may not appear to be so with another, and this is even more so when the woman suffers from a narrow vagina, and the man's member is of such a size that intercourse becomes impossible. Furthermore, it is true that the narrowness of the vagina is indeed to be considered from the woman's side, as the proceedings demonstrate; but on the contrary, the man's member was also, according to the judgment of the physicians, such that it did not reach the average size, and the same proceedings and the same evidence proclaim this. Therefore, there appears to be no impossibility of marital intercourse in this case. Hence, when expert physicians testify that the woman's genitals are found to be in a condition that does not exclude carnal union, these words must be understood to refer to the union of the woman with her husband. It is possible that the woman might not be able to have intercourse with another man, whose genitals would not be found in the same condition; but it must be said that she was fully able to have intercourse with her husband. Therefore, if the testimony indicates that she truly had intercourse with someone, even if this does not prove that she had intercourse with her husband, it does not exclude it. Indeed, given the marriage, given the physical act of intercourse which has been frequently performed, given that the man's genitals are perfectly suited to the woman's, and given that the woman demonstrates that she has had true intercourse, all reason suggests that we should say that the marriage has truly been consummated. And so it is, from that moral certainty, which clearly arises from what has been presented. But since we must proceed legally, hence, even considering the testimony of Doctor Petithan, who teaches that it is difficult to assert, in this case, that the consummation of the marriage has taken place; however, since this fact is neither excluded by the woman herself, nor by other expert physicians, with certain evidence, this is quite sufficient to answer the question "Does it appear that there was no consummation in this case?"

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with a "No."

[*Latin ed. p. 419*]

LEODIEN. 419 This is confirmed by the testimony of the seventh witness. For, although from the testimony of the seventh witness, that very thing can be ascertained which, according to the oath of the parties, namely, either consummation or non-consummation, the witnesses testify, either in favor of the man or in favor of the woman; yet, if the quality of the witnesses is examined, we shall see that those who testify in favor of the man are more reliable, and therefore to be preferred, since they know him from his youth, with whom they have no suspicious relationship, and of whom they say, "they testify that he is, if not a good man, at least a good man." Therefore, since it is not established either that the man is impotent, nor that the marriage was not consummated; hence, to the question: "Should the judgment of the Leodiensis court be confirmed in this case?" I believe it should be answered, along with the most learned defender of the bond: "Affirmatively." OPINION OF THE CANONIST. Firstly, he says, in the records of the process, the following do not appear: namely, the Decree by which the Defender of the Bond is constituted, and the other members of the ecclesiastical tribunal; the oath of the same Defender, as prescribed in the Benedictine Bull; the Decree in each session; the citation of the aforementioned Defender in each session; consequently, if these things were truly omitted, the records of the process would not proceed according to the law, and would therefore be defective in form. However, it is certain that the examination of this woman was not made by midwives and a matron, but by three experts in the art of medicine, separately. Regarding this, the Bishop requested a dispensation, given the circumstances of that place, and perhaps the prejudices of those persons prevent such an examination from being made by midwives and a matron. This pertains to the form of the process. As for the value of the marriage itself, I say: It is not established that the marriage was not consummated in this case. In our case, chapter 1 on frigidity and maleficence is available. Note the words: "But if she proclaims, after a year, or half a year, to the Bishop, or his emissary, that she does not know him, and you, on the contrary..."

[*Latin ed. p. 420*]

420 LEODIEN. He argues that you must believe this because you are the wife; for if she had wanted to proclaim it, why did she remain silent for so long? She could have quickly and in a short time learned whether she could have intercourse with him. The actress cohabited peacefully with her husband for a year, and very frequently had marital relations with him; when questioned under oath, "Have you fulfilled your marital duty to your husband?" she replied: "From the first day of marriage, and then, frequently, whenever he requested it, indeed, almost every day." And throughout this

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time, she was deeply convinced that her husband truly consummated the marriage. When questioned by the Judge: "Did you believe that your husband was capable of consummating the marriage?" she replied: "Yes, that is what I thought at the time." Indeed, she was so convinced that, seized by jealousy, she brought her husband before the civil court on the grounds of adultery, proved this adultery, and obtained a divorce as a result of it. When questioned, "Was your husband condemned in the civil court, and was the separation decreed solely on the grounds of adultery?" she replied: "I BELIEVE THAT TO BE THE CASE." When questioned again, "Did you not have the intention of invoking the cause of impotence?" she replied: "In no way." After approximately seven years from that separation, she proclaimed, saying that her husband was impotent for intercourse. Whoever sees this, can see how different it is from what has been described. She herself stated that the reason for such a long delay was "because I did not know what this, the consummation of marriage, was." How can it be supposed that a wife does not feel the penetration of the penis in marital acts, and does not feel the penis itself penetrate the barrier of virginity, in which consists the power of intercourse and consummation? If this supposition were admitted, we would have to affirm that the aforementioned law is false in those words: "Quickly and in a short time, he could have known whether he could have intercourse with you." Let it be noted that all of this canonical procedure rests entirely on this premise, since it is the reason for the procedure itself. Therefore, either she does not know what it is, the actress now says, or she is mad, as the husband testified: "She was said not to be of sound mind." Or, under the guise of simplicity, it is a pure invention on her part, in order to lead to other...

[*Latin ed. p. 421*]

LEODIEN. 421 [Concerning whether a marriage can be annulled.] In these three cases, the annulment is to be entirely rejected. The husband, truly questioned by the judge, "Have you consummated the marriage with your wife?" answered: "I have." Again questioned: "Did you, at the beginning of the marriage, believe that the consummation of the marriage consisted in some particular act?" He answered: "I knew." A third time questioned: "Did you consummate the marriage in such a way that a child could be conceived and born?" He answered: "I did so, and indeed, frequently." It appears, says the consultant, that here, those other words recently cited from the law should rightly be invoked and applied, namely: "You, affirming the contrary, are to be believed, because you are the husband." Indeed, the true cause of the impotence, which the plaintiff brings forward, must be considered. She says nothing about natural imperfections of the husband's penis, such as a defect in erection, or weakness, or excessive thickness, or a defect in ejaculation; but she only mentions a hernia, from which the husband suffers, through which he was impotent, and now it prevents

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him "from cohabiting, or from consummating the marriage." The husband himself, questioned by the judge under oath, answered: "This hernia in no way prevented the consummation of the marriage." At the beginning and throughout the marriage, the hernia was of such small size that the plaintiff herself confessed that she never noticed its presence during conjugal acts with her husband. The doctors in medicine and surgery, who, at the mandate of the ecclesiastical judge, examined the body of John Baptist Gervais, the husband of the plaintiff, that is, Deggeller, Bidlot, Snyers, having taken an oath, testified: "When the hernia is reduced, the penis is in its natural and ordinary state." Then, each of them wrote a written testimony, saying that Gervais shows no sign of impotence. To whom should credence be given, to the experts in the medical and surgical art, or to the assertion of the ignorant woman? No one of sound mind can give credence to the latter. But if the doctrine of the canonists is common and irrefutable;

[*Latin ed. p. 422*]

422 LEODIEN. From the writings of Coscius, reported in *De Separatione Thori Coniugum*, Book I, Chapter XIII, paragraph 15, using these terms: "Furthermore, it must be believed that a man of doubtful potency, if he affirms that he has had perfect intercourse, and the woman denies it, to the extent that only doubtful and ambiguous signs, and not certain signs, of impotence result; and in both cases, a judgment must be made concerning the validity of the marriage." In the case of John Baptist Gervais, no sign, not even a doubtful one, of impotence appears; indeed, the ability to have intercourse is admitted by the aforementioned doctors as certain. Therefore, all the more must a judgment be made in favor of the validity of the marriage in this case. Furthermore, in such cases, an examination of the woman's body must be made, as prescribed by the law, and as taught by the canonists. Indeed, the aforementioned doctors, at the mandate of the ecclesiastical judge, examined the genital parts of the actress Barbara Antonia and testified that intercourse could have taken place. The actress calls witnesses, but they affirm nothing other than what the actress told them; therefore, if the depositions of the same Antonia, the actress, are to be disregarded, even more so should the depositions of the aforementioned witnesses be disregarded. However, the depositions of the witnesses are to be considered if, immediately after the marriage contract, that is, on the second or third day, or within the same week, or within the same month, a rumor or word spreads secretly among the neighbors that one of the spouses is impotent; and if this rumor or word originates from a hidden lamentation, or from some expression made by one of the aforementioned spouses. This is not the case when, after seven years from the separation, one of the spouses begins to suspect that the other is impotent; as in our case, and manifests this suspicion to others, and then calls them as witnesses. This is what the actress did; consequently, these witnesses can conclude

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nothing. Therefore, the thesis already stated is sufficiently and abundantly demonstrated, namely, that there is no proof of the lack of consummation, but rather sufficient proof of the consummation of the marriage in this case.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. To John Baptist Gervais, who, being twenty-seven years old,

[*Latin ed. p. 423*]

LIEGE. On the 423rd day, Barbara Antonia Haihin, a young woman of nineteen years, was duly married on September 14, 1871, and now claims to be incapable of fulfilling her marital duties. The ecclesiastical judge of Liege, to whom the matter of inquiry was entrusted by the Most Holy Prince, having brought the case to Malix, found no certain evidence of the husband's impotence, nor of the wife's inviolate virginity. Furthermore, the esteemed theologians and canonists consulted by the judge rendered their opinions without ambiguity. And rightly so. For the three experts who examined the bodies of the spouses found no traces of impotence in the man's body, nor any signs of virginity in the woman's body. Indeed, they observed such a complete compatibility between the spouses' genitals that they considered any doubt regarding impotence to be highly improbable. The husband, whom the most numerous and trustworthy witnesses unanimously declare to be worthy of belief, clearly affirms the consummation of the marriage, which the wife, though infected, cannot deny having experienced. She confesses that she has lived in peace with her husband for a year. When questioned by the judge, "Did you render the marital debt to your husband?" she replied: "Yes, from the first day of marriage, and then frequently, whenever he requested it, indeed, almost every day, with only a few exceptions." To the question, "Therefore, at that time, did you believe your husband to be capable of consummating the marriage?" she responded: "Yes, at that time, I believed so." The judge then asked, "Did you not request a separation from cohabitation from the civil court?" She replied: "Yes, in September 1873." The judge: "And for what reason?" She replied: "Because of adultery." The judge: "Was this separation decreed solely on the grounds of adultery?" She replied: "I believe that to be the case. Did you not intend to invoke the cause of impotence?" "In no way." Here, reference is made to chapter i concerning frigidity and malice: "Why did she remain silent for so long? She could have known very quickly, in a short time, whether she could have intercourse with him (John)." The Fathers deem further elaboration unnecessary.

[*Latin ed. p. 424*]

424. LEODIEN. Concerning a troublesome matter, I send another, and without delay, request that the written question be reconsidered – No, and furthermore. Having considered these points, the question to be addressed was whether to grant a dispensation concerning a marriage that is valid

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but not consummated in a particular case. RESOLUTION. After discussion by the Sacred Congregation on September 12, 1891, it was decided to respond: No. From which, the following may be gathered: I. Since it can be quickly and in a short time determined whether a marriage has been consummated between spouses, it is not easy to believe a woman, after a long time, and concerning the husband's impotence, when she has not previously expressed such doubts. II. A woman, motivated by a frivolous reason, to declare the husband's impotence after many years, when throughout the entire marriage, from its beginning, she has often and frequently had marital relations with the husband, and has not doubted the consummation of the marriage. AQUEN. PENSION. On December 12, 1891, Session 24, Chapter 12, Concerning Reforms. The priest Francis Gaglione, having administered the parish of Trisobbio in the diocese of Acqui for approximately 24 years, was compelled, in the year 1878, due to failing health, to relinquish his pastoral duties. In order that he might not lack proper support, at the urging of the Bishop, by Apostolic Letters dated July 25, 1878, an annual pension of 600 livres was reserved for him from the benefices, and subsequently, on March 6, 1879, the approval of the civil authorities was also obtained. However, the Bishop, on July 7, 1878, before sending prayers to the Supreme Prince requesting the granting of the pension, prepared a COMPENDIUM OF THE FACTS.

[*Latin ed. p. 425*]

ACQUI. He wished to have 425 lire set aside, so that Archpriest Gaglione would promise, to himself and his successors, to restore the tax on movable property and on dead stock. This agreement, having been signed and accepted, he soon after left the parish. He lived briefly and in his native town, and, anticipating troubles, informed the public official, commonly known as the "tax agent," of the pension he had received, who immediately ordered that a tax "on movable property" be paid in annual installments of 17.26 lire. Meanwhile, for two years, the full pension of 600 lire was first paid by the economist of vacant benefices, and then by the new parish priest, Dominic Negri. But later, when Priest Negri realized that the pension, as mentioned in the aforementioned agreement, was subject to taxes for the benefit of the male part of the archpriest, and that these taxes would amount to 108 lire annually, he considered it permissible to deduct this aforementioned sum from the 600 lire payment. This origin of the dispute was brought before the Bishop, and Priest Gaglione claimed that he had first intended to appeal to the Metropolitan Court of Turin and then to the highest ecclesiastical authority; however, this matter was finally settled by the Bishop of Acqui on November 8, 1881, as appears from the declaration signed by the parties and by the court clerk. This settlement was as follows: Parish Priest Negri undertook to pay half of the taxes on movable property and on dead stock, in the amount of 54 lire; the other half would be the

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responsibility of the pensioner, Gaglione; who would pay only 40 lire, in order to obtain an exemption from the tax on dead stock. After this, things seemed to proceed peacefully until the year 1889, when Bishop Sciandra, who had arranged for the settlement, entered the priesthood. At that time, Priest Gaglione, who had in the meantime moved his home to the diocese of Genoa, wrote to the new Bishop, requesting that Archpriest Negri pay the full pension of 600 lire in the future, and also to reimburse him the sums that had been deducted under the pretext of the tax "on movable property and on dead stock" for the past.

[*Latin ed. p. 426*]

425 ACQUI. When the Bishop was unwilling to exercise his authority in such a matter, the case was brought before the Sacred Congregation of the Council, with the encouragement of the Ordinary himself. Here, the archpriest Negri not only insisted on the rejection of the petitioner's request, but also opposed the appeal: requesting that this pension be allocated to the small income of the parish; which, as it is now, cannot possibly bear it. The Bishop, when asked according to custom, gave instructions to his general vicar, who had previously held the same office, to inform the Sacred Congregation of the state of the matter. This official, acting according to custom, reported that the facts related by the priest Negri were true. Later, when the Bishop of Acqui was again asked to provide a fuller account and to express his opinion, he stated that the priest Gaglione's petition was based on the understanding that no mention of the pension had been made to him at the time of the parish assignment; while the appellant confessed that he had undertaken the obligation to pay taxes on movable and immovable property in order to benefit the aforementioned parish. To this, the Ordinary added that Bishop Sciandra had assessed the pension at 500 *libellae*, and that if it were allowed to be 600 *libellae*, it would be due to the obligation assumed by the pensioner to pay taxes; that the priest Gaglione now enjoys better health and has obtained an office in Genoa with some remuneration; and that the archpriest of the neighboring parish of Trissobbio is assisted by the parish treasury in order to be able to pay the stipend to the assistant priest. After all these details were presented, in the audience of the Most Holy Fathers on November 16th of the past year, a decree was issued: "The Most Holy Fathers referred the matter to the Sacred Congregation of the Council with the necessary and appropriate powers, and with the clause regarding the opening of proceedings against the Apostolic Letters of July 25, 1878."

Synopsis of the Discussion. DEFENSE OF PRIEST GAGLIONE. Here, it is noted that, according to the Bull of July 25, 1878, which is not found in the records, an annual pension of 600 *libellae* is due without any deduction. Furthermore, not a single word or phrase can be found there regarding a

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reduction.

[*Latin ed. p. 427*]

SECTION 427: Concerning taxes, or the power to reduce a pension granted to a Bishop or archpriest. Indeed, it is certain, as was noted in Fermo on the Feast of the Assumption, August 29th of this year, that the laws by which pensions are usually imposed by the Roman Curia require that they be paid in full and free from any burden, as was also discussed before the Most Holy Governing Council in Orte on April 11, 1807, and on several occasions in the Sacred Congregation of Bishops and Regular Canons, and specifically in Rome on September 20, 1878 (1). It would not seem fitting to say that the priest Gaglione can be compelled by force of contract to do something that the law does not impose upon him. For the declaration which he issued in the Curia, before receiving the pension, and which is affirmed to have been dictated by the Bishop, speaks only of "a tax on movable property corresponding to six hundred lire of the pension..." and also of a "fixed tax" should the said "pension be affected." However, the "tax on movable property" imposed by the pension itself is paid by the pensioner in annual installments of 17.26; and the "fixed tax," which is demanded only by those, as they say, of moral standing, does not apply to pensions at all. Therefore, since in the aforementioned declaration mention is made of taxes imposed or to be imposed on the pension, and not of taxes that could affect the parish property, it seems unjust to require the priest Gaglione to pay the "tax on movable property" twice, and to demand from him another tax which he promised to refund "only if the said pension were affected." It is also considered inappropriate to assert that the priest Gaglione believes that the will of Bishop Sciandra was different from what appears. For, besides the fact that this has not been well considered, it would be unheard of in contracts to consider the intention, and not the accepted form of expression. And in truth, Cardinal De Luca, in *De Alienatione*, book 4, chapter 8, number 12, clearly states that the words of the contracting parties, or the agreements, are to be understood according to common usage.

(1) *Revue Ecclésiastique*, Vol. XI, page 894.

[*Latin ed. p. 428*]

428. AQUÉN. In order that the obligation may correspond to the circumstances. However, the Bishop states that if the Bishop has considered something else, it should not be considered to be of the slightest importance, since, as stated in chapter [referring to a pastoral document] regarding exceptions, there are circumstances that are as much present as they are apparent. Regarding the agreement that was initiated before the same Prelate on November 8, 1881, the priest Gaglione argues that the name of the agreement does not suit him, since it was made under the pressure

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of the Bishop. Therefore, having established that such an agreement was drawn up at the order of the Bishop, and that the priest Gaglione lacked the freedom required of contracting parties, there would undoubtedly be a valid reason for rescinding the contract, as all doctors unanimously hold, according to the commonly accepted axiom: "a coerced will is a will in the opposite direction." However, the reverential fear that appears to have been present in the case, as described by the plaintiff, cannot remove the will, and it can be questioned, according to Rule 14 ff. of the Rules of Law: "it is not believed that one wills who obeys the command of a father or lord." In order for this fear to be invoked for the dissolution of the contract, it is not necessary that there be a true and real threat of great harm, but it is sufficient that the danger of harm looms, that is, a just and probable fear of harm. L. I, nec timorem ff. Regarding what the fear causes, and L 3 % Armis ff. regarding force and armed force, etc. All of these things could be present in this case, especially considering the priest Gaglione's great reverence for the Prelate, as well as his advanced age and infirm health. If the plaintiff cannot be bound by the taxes, about which there is a dispute, to the archpriest Negri, and the agreement of November 8 must be considered invalid, it seems to the same plaintiff that the sums previously deducted should be returned to him. Indeed, as Cardinal De Luca states in *De Regul.*, discourse 68, no. 8, and discourse 106, no. 8, restitution must be made of those things that were unjustly taken, since the alien thing cries out to its owner. Regarding the other part of the case, it must be noted that one must never act against the Letters of the Supreme Pontiff.

[*Latin ed. p. 429*]

ACQUI. 429: It is permissible to grant [a dispensation] unless it is established that they suffer from the vice of deceit or trickery, and that the Supreme Prince has been deceived and circumvented in granting it. Cardinal De Luca, *De Iuribus*, d. 2, c. 8, n. 6. *Rota coram Crescendo*, decr. 116, n. 5, and decr. 141, n. 1, and in *Reatina*, application of the endowment concerning dispensations, June 17, 1735, § Reason before Rezzonico. Indeed, as noted in the Sacred Congregation of the Holy Office, *Cum Nucerina Paganorum*, August 25, 1877, unless some suspicions arise that call into question the will of the Pontiff or his deception, either born of a false narrative or a cunning reticence, no one can object to the grace granted by the Pontiff, lest unjust and useless lawsuits be fostered rather than suppressed. Certainly, when, at the request of the Bishop, a pension of 600 livres was granted by the Holy See to the priest Gaglione, any suspicion of deception or cunning reticence would seem to be banished. However, the parish priest Negri asserts that even the Curia of Acqui was deceived, as the aforementioned parish priest Gaglione, giving blind faith, reported to the Holy See that the income of the parish benefice amounted to the sum of 3000 livres per year; but this assertion, the pensioner affirms, lacks a

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solid foundation. He recalls that he improved the assets of the benefice, and that he spent more than 12,000 livres on repairing buildings and cultivating fields, and that the income from these activities reached the sum of 3000 livres per year. He defends this with the utmost truth, not only because the Bishop, before presenting his requests to the Supreme Prince, wanted to be more certain of the things he had to assert, but also because, in order to obtain the approval of the governing power, it was necessary for an expert to write a report, and for that report to be subsequently confirmed under oath before the praetor of the place, Carpeneto. Furthermore, the matter was known to the sub-economus of the vacant benefices, who certainly does not appear to have omitted any diligence. Therefore, no indication of falsehood appears, and consequently, those things which are objected to by the parish priest Negri are, as such, empty and should be dismissed. But if, after...

[*Latin ed. p. 430*]

430 AQUÉN. In these years, either due to inclement weather or some other cause, the fertility of the land has not been as it was hoped; this concerns a temporary decrease in the yield of crops, which cannot provide a reason to reduce the pension, nor can it be brought before the courts of law. Furthermore, since the priest Negri served for almost two years as the spiritual shepherd and administrator of the temporal goods of that parish, before the local archpriest Trisobbio resigned, he should have had the best prospects for beneficial revenues, and therefore it cannot be presumed that he undertook obligations that exceeded the resources of the benefice. Finally, even considering that the parish revenues were somewhat short of 3000 livres, it must be noted, according to the confession of the current parish priest, that they could be calculated at two thousand livres, in that total which is far above what is required by the sacred canons, and therefore, no argument can be drawn from this point to support a claim for further compensation. On the other hand, the priest Gaglione – it is important to note, as the Sacred Congregation for the Council has stated – is a venerable old priest who has spent his life in pastoral ministry, and to whom, with a reduced pension, the means for a completely honest livelihood are entirely lacking. DEFENSE OF THE ARCHPRIEST NEGRI. In making deductions concerning the archpriest Negri, it seemed appropriate to first refer to those things that he observes regarding the agreement drawn up by the priest Gaglione, before his resignation, namely: that the object of the declaration of July 7, 1878, was to burden Gaglione with taxes that would diminish the pension in the hands of the beneficiary; namely, that just as the sum of 600 livres is deducted from the beneficiary, so he should be exempted from the taxes corresponding to those 600 livres. Therefore, the aforementioned declaration, signed by Gaglione, does not refer to the tax that the demesne demanded from him as a pensioner. Therefore, it would seem that

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the Bishop proposed, and the priest Gaglione signed, an agreement that, in effect, concerned the taxes, by which the parish priest was burdened, corresponding to 600 livres.

[*Latin ed. p. 431*]

AQUÉN. 431 seized. Regarding the matter, see Cardinal De Luca, *De Donat.*, discourse 34, no. 11: "In all dispositions or actions, whether of the living or the dying, it must be primarily considered that not the outward appearance and the mere words, but the substance of truth be examined; therefore, as is stated in Franch., decision 392, no. 2 and following, and in Merlin, decision 210, no. 7, and elsewhere, if the contracting parties say that they are making an emphyteutical contract, but truly and genuinely demonstrate the agreements and conditions, it is rather a matter of purchase and sale; the word should not be considered, but the nature or truth of the act." Furthermore, whatever may be the case regarding this initial declaration, the parish priest Negri believes that the agreement between the parties, initiated before the Bishop, is so clear that at least the obligation of the parish priest Gaglione is manifestly extinguished. Nor could the lack of freedom invalidate it, since it is established in law, as Voet states in book 4, title 2, no. 14, and as Pitonio states in *Disceptationes Ecclesiasticæ*, discourse 110, no. 34, that fear is not presumed, but must be clearly proven by the one alleging it. Indeed, in this case, no proof of such fear was presented, because what the priest Gaglione gratuitously asserts, seems equally gratuitously to be denied. Moreover, as taught by S. G. C. in Oxomen, on August 14, 1880, it is well known that fear, in order to excuse one from an obligation, must be of such a nature as to affect a reasonable person: for no frivolous fear is an excuse (I. metus 6, 7, ff.), since fear is the cause. L. de Regul. 9 states: "nor is it sufficient that anyone should have been frightened by any terror" (I. metus, ff., concerning the causes). Therefore, as Bossius states in chapter 11, § 14, 16, in order to establish a legally valid fear, it must be required "that the evil be absolutely and in itself great and serious, but also that the one fearing cannot easily dispel it or prevent it." However, all of these considerations seem to be excluded, not only by the character of Bishop Sciandra, but also by the nature of the priest Gaglione, who had already approached patrons and had prepared an appeal to the Archbishop and to the Holy See, as he himself states. Therefore, the agreement concerning the taxes, which was initiated on November 8, 1881, should remain in force, as long as Bishop Sciandra is alive, and as long as the pensioner himself does not...

[*Latin ed. p. 432*]

432. AQUÉN. The matter was brought into question again. Indeed, as is stated in I, initial pages, concerning Patti, nothing is more in harmony with human faith than that words and promises which have already been

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agreed upon should be observed; and in this case, the priest Gaglione could certainly not have deviated from them. "Just as, at the beginning, it is the free power of each to have or not to have a contract, so no one can renounce an obligation once established, without the consent of the other party": L. 5 of the Code of Obligations, and natural law. To all this, it could be added that the agreement was initiated after the parties had instituted a dispute, and therefore it seems to take on the nature of a transaction, which, as the jurists say, extinguishes all prior rights and actions and is to be observed forever. After these considerations, it appears that the restitution of the sum still due under the aforementioned agreement for the taxes levied, which the priest Gaglione requests from the Sacred Office, was denied by the parish priest Negri. For, having admitted the legitimate right to this levy, since the sum was no longer improperly paid, no action could be brought to recover it. Furthermore, the parish priest states that he has been bound by the transaction, not only having consumed all the benefits derived from it in good faith, but also having been burdened with the debts of others for reasons to be explained below, and therefore any payment would be entirely inappropriate. Regarding the counter-claim, it was noted that it was legally permissible to bring forth a defense in court against Apostolic Letters, if something necessary had not been expressed in them, or if something false had been alleged: Chapter on Uterine Matters concerning Rescripts. With this established, the archpriest Negri contends that the pension of 600 livres was a benefit imposed on the parish of Trisobbio, both because the merits of the priest Gaglione in increasing the revenues of that parish were exaggerated, and because it was falsely stated that those same revenues reached three thousand livres. And as for the first point, he does not deny that a certain sum of money was spent by the priest Gaglione on works carried out, but apart from the fact that the work proved to be useless, it was completed "by alienating the revenue of the legate Boccaccio," presenting a capital of approximately 2000 livres. > Expenses incurred.

[*Latin ed. p. 433*]

AQUÉN. 433 Concerning those whom he claims to have made pay a sum of 12,000, it is stated that this sum pertains to "those consumed in the dispute against the contractor Bistolfi," and that, indeed, no beneficial goods resulted from it. Furthermore, it is asserted that the manner in which the priest Gaglione administered the beneficial goods can be ascertained from the declaration of the participating farmers, who state that Priest Gaglione, renouncing the benefice, left the same lands in a most deplorable condition. Indeed, the parish priest Negri adds that, by this method of acting, the revenues of the benefice, along with the damage to the lands, were increased to the benefit of Priest Gaglione. However, it was never possible to account for such a sum in the annual total of 3,000. And here it is noted

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that the revenues of the benefice are comprised, in part, of certain public debts, as they claim, and other fixed levies, and in part of the fruits of the lands. Since the previous annual sum amounted to 1,500, in order to obtain the asserted sum of 3,000, the others must also have reached an equal amount. Indeed, documents are presented which the episcopal court has recognized, and which appear to accurately show the fruits of the lands, after deducting the expenses of cultivating the lands, to amount to barely 500. When these are combined with the other fruits, the revenue amounts to 2,000, that is, one-third less than that which Priest Gaglione declared for the purpose of obtaining his pension. Truly, in recent years, the fruits have been greatly diminished, as the municipal authority has not hesitated to declare. However, it does not seem that the parish priest attributes the reduction in the pension primarily to this cause. Rather, he insists on the falsified declaration of revenues, which, by his own written words, appears to be a lie. He presents a calculation of the fruits of the lands, written by the priest Gaglione himself and recognized in the episcopal chancery, from which it appears that such fruits, in the years 1872 and 1876, can be assigned to barely 500. Therefore, since it appears to be judged from his own mouth, adding anything further seems superfluous. However, it is not considered necessary to examine whether a sum is adequate for the parish priest, after deducting the pension. For, according to the reduced amount, the sum is insufficient.

[*Latin ed. p. 434*]

434 AQUÉN. He believes that in order to obtain a solution, it must be considered whether a false allegation has been made regarding the Letters Apostolicae, and he states that this is evident from what has already been presented. Therefore, he affirms that if the Bishop and the Supreme Pontiff had known that the revenues from the benefice did not amount to 3,000, but only to 2,000, a much smaller pension would have been established. Furthermore, he asserts that the archpriest Negri does not have the necessary means to maintain himself adequately from the fruits of the benefice. In addition to what has been reported by the municipal authority regarding the actual diminution of income, he states that, in order to advise on the temporal affairs of the parish, he should not have been burdened with such a heavy financial burden. He says that this was especially the case in the restoration of the parish house, which the priest Gaglione had left in such a ruinous state that a visiting expert declared, "only the walls remained." The building council, which, as the Bishop indicated, provides assistance to the parish priest, had already been complaining to the Ordinary since 1885 about its own precarious financial situation. With these premises, the following questions were proposed: I. Whether and in what amount the pensioner Gaglione is obliged to refund to the archpriest Negri the taxes commonly called "di ricchezza mobile e manomorta" in this case. And, II.

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Whether the aforementioned priest Gaglione has the right to recover the money that has been deducted from the pension payment thus far due to these aforementioned taxes. III. Whether the matter of the publication of the Apostolic Letters of July 25, 1878, is relevant in this case. And, IV. Whether and in what way there is a basis for a reduction of the pension in this case. RESOLUTION. The Sacred Congregation of the Council, after discussion on December 12, 1891, decided to respond as follows: To I: Affirmative, according to the form of the agreement of November 8, 1881. To II: Provisionally. To III: Negative. To IV: Provisionally and furthermore.

[*Latin ed. p. 435*]

AQEN. 435. FROM WHICH CONCLUSIONS ARE DRAWN. I. No one can renounce an obligation once established, without the consent of the opposing party. II. Regarding the matter of fulfilling the obligation of paying half of the taxes, the documents 54 freely attest that the priest Gaglione assumed this obligation on November 8, 1881. COMO. REGARDING THE INTERPRETATION. On December 12, 1891. Through summary petitions, certain laws concerning the life and morality of clerics, which have been in full force in the Diocese of Como since 1874, received confirmation from the Sacred Congregation of the Council, under the name of "Edict," after being promulgated by Bishop Carsana, with the advice of the chapter, and were highly praised by the Most Holy Pope Pius IX. Among other things, the following words are read therein: "We will not admit any petition for the collation of benefices from those who have not presented to us proof of having completed the spiritual exercises within the four years." Recently, the Ordinary of Como, concerning the interpretation of these words, requested that the Sacred Congregation of the Council expressly declare that the collation of benefices, even those indicated for benefices in any way reserved to the Holy See, are subject to this diocesan law without distinction, "so that, as he himself wrote, this law would provide him with a means to encourage, as is fitting, even the less pious priests to frequently attend the spiritual retreats." SUMMARY OF THE FACTS. A SYNOPTIC DISCUSSION. It cannot be denied that everyone who is eligible to obtain a benefice has the right to present themselves for consideration, and therefore the Council of Trent, Session 24, chapter 18, concerning reforms, indicated that all should be invited "who desire to be considered." OBJECTIONS TO THE ORDINARY'S PETITION.

[*Latin ed. p. 436*]

436. CONCURSUSES. Must be examined. > As has been declared on several occasions by the Sacred Congregation of the Council, and subsequently confirmed by the Supreme Pontiffs Clement XI on the 10th day of January, 1721, and Benedict XIV in the Constitution *Cum Illud* - there - "public notice of the competition shall be proclaimed by edict, so that all

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may be clearly and openly warned." From all of these things, it would be permissible to conclude, in accordance with the opinion of Garcia in *De Beneficiis*, page IX, chapter 2, paragraph 209: that when there is no legal impediment to the admission of someone to the competition, it will not be within the power of the Bishop to prevent such admission, nor does it seem that a diocesan or provincial synodal constitution, by which such a right is extinguished or diminished, is valid. Perhaps it could not be said that the approval of the Supreme Authority has given greater force to the diocesan law. For, besides the fact that it concerns an approval in a general form, which could not extend to dispositions that exceed the common law, it must be noted that there is no express mention of competitions for benefices reserved to the Supreme Pontiff, and therefore those words must be interpreted strictly, as if they were odious. As for the necessity of extending the law, as the only means for the less pious priests to attend spiritual retreats, it should be observed that other means, such as the threat of canonical penalties, are always available to the Bishop to achieve his purpose more effectively. WHAT FAVORS THE ORDINARY'S PETITION. Nevertheless, it must be noted that Benedict XIV, in the aforementioned Constitution *Cum Illud*, subjected, without any distinction, parochial benefices reserved to the Holy See to the law of competition, and therefore also to those particular laws which regulate such competitions in each diocese. Therefore, since the matter at hand concerns an edict promulgated by the Bishop, after consultation with the chapter, and, accordingly, according to the teaching of the same Supreme Pontiff, the strength of the synodal constitutions lies in the diocesan synod, it would seem that all and each competition for the provision of parishes are included under that prescription. Even more so, since the Council of Trent, in the aforementioned passage, leaves some room for the Bishop's prudence or the provincial synod.

[*Latin ed. p. 437*]

GOMEN. 437. The laws pertaining to the customs of regions are observed, and the Sacred Congregation [of Bishops] maintains that those Bishops whom it deems neither worthy nor suitable cannot be rejected from examination, nor can they appeal against such a rejection, as in the case of the archpresbyterate of Tarentina on December 7, 1720, and the Concursus of St. Mark and Bisiniano on June 22, 1850. Furthermore, regarding the most appropriate means of fostering piety in the clergy, it cannot be doubted that Ordinaries are in a better position to judge than others; therefore, the Sacred Congregation often follows their judgment in such matters. With these considerations in mind, the question was raised as to what should be answered to the petitioner. RESOLUTION. The Sacred Congregation, having considered the matter, decided to respond: The diocesan law is extended in this case even to benefices, the collation of which pertains to the Holy See. MARSORUM NOMINATION. On

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December 12, 1891. Through Summaria Preces. COMPENDIUM FACTI. In the final report of his diocese sent to the Sacred Congregation, under the heading "Concerning Postulants," the Bishop of MARSORUM wrote: "I request that, in the collegiate churches which have been suppressed by the infamous law of suppression, I may be able to nominate certain honorary canons without the consent of the chapter (which is now reduced to one, two, or at least three), and to invest them with their benefices, and that those newly nominated may have a voice, rights, and honors as if they were true titular chapter canons. And this so that the choir may revive in some places, if it is possible, and ecclesiastical functions may be performed with greater solemnity." Disputatio Synoptica. PETITIONS THAT APPEAR TO BE DENIABLE. Such a petition appears openly to infringe upon the law, either because the nomination of canons...

[*Latin ed. p. 438*]

438. From MARSORUM, a petition is made to the Holy See for a dispensation, either because these honorary canons would be granted canonical privileges and a voice in the chapters, and other canonical rights, or for some other reason. Indeed, as Scarfantonio states in *De canon.*, book 1, title 14, number 13, "the creation of these honorary canons cannot be done solely by the Bishop, but the consent of the chapter is also necessary." And therefore, according to Bouix in *De capitulis*, chapter 16, section 4, "it follows, according to the doctrine of certain authors, that the nomination of an honorary canon, whether made solely by the Bishop or solely by the chapter, remains invalid and null." This has been consistently taught by the Sacred Congregation of Rites, as evidenced by numerous resolutions from Fulginato, dated February 26, 1639, to Oritana, dated April 18, 1885. In the latter, the Sacred Congregation wished to maintain the integrity and validity of the law, even though the case concerned a chapter suppressed by unjust laws, and in which the number of canons had therefore been greatly reduced. Furthermore, it would be unusual and entirely contrary to the nature of honorary canons to grant them a voice in the chapter and other chapter privileges. For, as Fagnanus states in chapter 25 of *Dilecto de Praeb.*, number 10, honorary canons, or "windy dignities," as he calls them, since they are not true canons in substance, but only in name, cannot have a voice in the chapter and other rights that are attached to canons by their very nature, as Cardinal De Luca states in *De canonicis*, discourse 6, number 12, and discourse 47, number 2. These points are particularly important because the granting of these rights to honorary canons could harm the existing canons in suppressed collegiate churches, and could lead to questions and disputes, to the detriment of fraternal charity. The petition appears to deserve consideration. However, it might also be observed that the request of the Bishop of MARSORUM should be considered, rather than strictly adhering to the law, given the particular circumstances of the

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time and place. If the Prelate intends solely to increase the divine worship and to revive choral services in the churches, and if this cannot be achieved without granting these privileges, then the law does not seem to need to be strictly enforced.

[*Latin ed. p. 439*]

MARSORUM, 439, especially since there are not entirely lacking reasons for the granting of grace. Indeed, in suppressed collegiate churches, often only one or two canons remain, and the number is clearly lacking which is usually required for the validity of a capitular convocation. It is also not uncommon for canons, in addition to the honor, to be granted a voice in the chapter, along with canonical rights, as Cardinal De Luca states in *De canonicis, disp. 19, n. 28*: "To have a vote in the chapter does not make a canon, since even simple presbyters can sometimes obtain such a privilege by custom. Furthermore, the suppression of collegiate churches, carried out by illegitimate authority, does not deprive the Bishop of the right to appoint canons to those churches; therefore, if they are lacking, they cannot nevertheless be deprived of their other canonical rights. Indeed, as Bonix teaches in *De capit., cap. 1, § 3*: 'A canon is understood, and can absolutely subsist without a prebend; a canon, however, which differs considerably from a prebend, is 'the right to have a seat in the choir and a voice in the chapter by election among the brethren.'" (Ceccoperius, *Lucub. can., lib. 1, c. 2, n. 18'). Therefore, although, strictly speaking, such canons may not be called "honorary," whatever may be the case with the name, the Bishop of Marsorum's request seems to be acceptable in substance. With these considerations, it was asked what should be answered to the petitioner.

RESOLUTION. After having considered the matter, the Sacred Congregation [presumably the Congregation for Bishops] on December 12, 1891, decided to respond: According to the resolution of July 6, 1889, (1) that is, it is not expedient. (1) See *Acta*, Vol. XXII, 355, 4t.

[*Latin ed. p. 440*]

440 PRATO. INDULGENCE. On September 12, 1891, through a summary of petitions, the following was presented. Among the petitions submitted to the Congregation on May 30th, the last day for submissions, were prayers in which the Reverend Honoratus Bambini, canon of the Cathedral Church of Prato, requested an indulgence for the distribution of prayers in the morning, even though he was absent from the choir due to illness. At that time, it was decided by the Most Reverend Fathers to postpone the matter to further meetings, while in the meantime, the Reverend Father Secretary was instructed to inquire from the Ordinary for how long the petitioner had been a canon, and how he had fulfilled the duties of his canonry. The Ordinary responded: The petitioner received the investiture of the canonical prebend in the year 1884, and was present with the choir

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only during the first six months of the first year; he also taught at the Cicognini College during the same hours as the choir, and therefore rarely attended the Divine Office; he also taught Dogmatic Theology and the Greek language at the Diocesan Seminary with great merit; he was endowed with excellent morals; and through his teaching, he has greatly benefited the Diocese. Furthermore, a sworn medical certificate was presented, in which it is stated: that the petitioner has suffered from polyarthritis for many years; and that this disease has deformed his hands and feet to such an extent that walking, both due to the aforementioned affliction and due to a decrease in visual acuity, especially in the morning and evening hours, becomes uncertain. Therefore, the expert concludes that Canon Bambini cannot leave his house in the morning and attend the morning choir service without incurring manifest danger, and therefore requires the indulgence of the Apostolic See, all the more so because the affliction appears to be incurable and seems to have already taken on a chronic nature. Considering these and other observations, the question was raised as to how to respond to the petitions.

[*Latin ed. p. 441*]

RESOLUTION. 441 The Sacred Congregation of the Council, after deliberation on September 12, 1891, decided to respond: considering the particular circumstances, and if these circumstances persist, for a period of three years.

FROM THE DECREE OF THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION, which establishes that a carnal union, occurring after the exchange of vows, is not, by presumption of law, to be considered a valid marriage, nor is it to be recognized as a legitimate marriage in those places where clandestine marriages are considered valid. Mutual consent, from which just marriages are born, can be manifested and declared not only through words, but also through other external signs. Therefore, Alexander III (1), Innocent III (2), and Gregory IX (3), our predecessors, rightly decreed that a carnal union, if preceded by certain and valid vows, should be considered a true marriage, both in court and outside of court, unless a canonical impediment existed. And they intended that this presumption of law should have such force that it itself would establish and confirm the law, and would not admit of any contrary proof.

Subsequently, clandestine marriages, that is, those begun without the presence of a Parish Priest and two or three witnesses, since the Council of Trent (4) ordered them to be null and void, that ancient law necessarily ceased to be valid wherever the laws of Trent were promulgated or received by custom and usage. However, in those places where the laws of Trent do not hold sway, it has always been the judgment of the Apostolic See that the canons, which we have indicated, are valid.

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(1) Chapter: "Veniens, de Sponsalibus" (Concerning those who are coming, regarding vows).

(2) Chapter: "Tua nos, eodem tit." (You have made us, in the same title).

(3) Chapter: "Is qui fidem, eodem tit." (He who has faith, in the same title).

(4) Session XXIV, Chapter 1, "de Reform. matrim." (Concerning the reform of marriages).

[*Latin ed. p. 442*]

442. The DECREE remains in force. However, with the passage of time, it has gradually faded from the awareness and understanding of Christians. Indeed, several Bishops from those regions where clandestine marriages are considered valid, when recently asked what the people think about this matter, have reported that the canonical discipline concerning presumed marriages has been widely erased by custom and oblivion: therefore, it rarely, or not at all, happens that a union between betrothed persons is considered to be a marital union, and not a fornication; and that such a union is considered by the common opinion of men not as a legitimate marriage, but as the sin of fornication; nay, it is scarcely possible to persuade the people that betrothals, through carnal union, can pass into marriage. Therefore, considering these circumstances and reasons, and after consultation with our Venerable Brothers, the Cardinals of the Holy Roman Church, Inquisitors General in matters of faith, we abolish and annul by this Our Decree all the aforementioned canons and any other canonical provisions concerning this matter, which are also worthy of special mention, and we declare that they are to be considered, for all purposes, as if they had never been issued. At the same time, by these Our Letters, we decree and command that, in those places where clandestine marriages are considered valid, no ecclesiastical judge, in whose jurisdiction such matrimonial causes may be brought and judged, shall henceforth consider a carnal union occurring with betrothed persons as a presumed marital contract, nor shall it be recognized or declared as a legitimate marriage. However, we do not wish to impose, by the authority of this Decree, the necessity of observing the Tridentine form, where that form is not in force, for the validity of marriage. Given at Rome, at St. Peter's, on the 15th day of February, in the fourteenth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 443*]

44. FROM THE HOLY CONGREGATION OF RITES IN MARSEILLES. Decree concerning the beatification and canonization of the venerable Servant of God, Sister Anne Magdalene Remuzat, a religious professed of the Order of the Visitation of the Blessed Virgin Mary. CONCERNING THE QUESTION of whether the Commission for the Introduction of the Cause should be signed in this case, and for the purpose intended. Anne Mag-

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dalene Remuzat, born in Marseilles in the year 1696, entered the religious Order of the Visitation of the Blessed Virgin Mary. Her outstanding virtues, especially her admirable piety and devotion towards the Most Sacred Heart of Jesus, as well as her ardent zeal in promoting the cult of the Divine Heart, both within the Order of the Visitation and among the people of Marseilles, brought her a most distinguished reputation for holiness. This reputation for holiness, moreover, was supported by heavenly graces and miracles, which were said to have been granted by God through the intercession of this faithful Servant of God, and which, after her death, which occurred in the year 1730, not only did not cease, but increased more and more marvelously. For this reason, the Most Reverend Bishop of Marseilles finally instituted an inquiry, with ordinary authority, into the reputation for holiness of life, virtues, and miracles of the aforementioned Servant of God. After this was duly completed and presented to the Sacred Congregation of Rites, the Most Holy Pope Leo XIII graciously permitted that the question of the signing of the Commission for the Introduction of the aforementioned Cause of the Servant of God could be addressed in the same Sacred Congregation of Rites, in an ordinary manner, without the intervention or vote of the Consultors, even though less than ten years had elapsed since the presentation of the informative process in the records of the aforementioned Sacred Congregation. Hence, I, the undersigned, Prefect of the aforementioned Sacred Congregation and Relator of the Cause, at the request of the Most Reverend Lord, Ca-

[*Latin ed. p. 444*]

444 FROM the Sacred Congregation of Rites, Nocella, Protonotary Apostolic, Postulator of this Cause, having considered the suppliant letters of the Most Serene Emperor of Austria, of numerous Eminences of the Holy Roman Church, Cardinals, of the Most Reverend Prelates, and of other men distinguished by ecclesiastical and civil dignity, in a meeting of the Congregation of Sacred Rites, convened at the Vatican on the date indicated below, the following question was proposed for discussion: Whether a Commission for the Introduction of the Cause should be appointed in this case, and to what effect? Furthermore, the Sacred Congregation itself, after mature deliberation on all matters, and having heard the opinion, both orally and in writing, of the Reverend Father Dionysius, of the Most Holy Faith, Promoter of the Sacred Congregation, decided to respond: AFFIRMATIVE, IF IT HAS PLEASED THE MOST HOLY [Father]. On December 19, 1891. All of which, faithfully reported to the Most Holy Lord, our Pope Leo XIII, by the undersigned Secretary, His Holiness approved and confirmed the judgment of the Sacred Congregation; and deigned to sign the Commission for the Introduction of the aforementioned Cause of the Venerable Servant of God, Anne Magdalene Remuzat. On the 24th of the same month and year. CAL CARD. ALOISI-MASELLA, Prefect. L. 8 S.

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VINC. Nussi, Secretary.

Decree of beatification and canonization of the Venerable Servant of God, Sister Theresa of Saint Augustine, a professed nun of the Order of Discalced Carmelites. In the presence of the Most Reverend Father, Father Dionysius of Saint Theresa, General Definitor of the Order of Discalced Carmelites, and Postulator of the Cause of Beatification and Canonization of the aforementioned Venerable Servant of God, Sister Theresa of Saint Augustine, and the Most Eminent and Reverend Lord Cardinal Miecislaus Ledochowski, Promoter of this Cause, in a meeting of the Congregation of Sacred Rites, convened at the Vatican.

[*Latin ed. p. 445*]

445. On a day designated according to the established procedures of the Sacred Congregation, the following question was presented: "Does it pertain to the Decretals of Pope Urban VIII concerning the non-exhibition of the cult of the aforementioned Venerable Servant of God, in the case in question, and to the effect of which we are speaking?" Furthermore, the Most Reverend Fathers, Prefects of the Sacred Rites, after careful consideration, and after hearing the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Sacred Faith, judged it necessary to respond: "It pertains." On December 19, 1891. These matters, faithfully reported by the undersigned Secretary to His Holiness, Pope Leo XIII, were deemed worthy of approval and confirmation by His Holiness on the 24th of the same month and year. CARD. ALOISI-MASELLA, Prefect, S. R. C. L. % R. P. VINCENTIUS JNUSSI, Secretary, S. R. C. From Acqui. Decree concerning Sister Paulina Aloisia de Pinczon du Sel, foundress of the Congregation of Sisters of Our Lady of Grace, founded by Saint Thomas of Villanova. CONCERNING THE QUESTION: Should a Commission for the Introduction of the Cause be appointed, and to the effect of which we are speaking? The illustrious reputation of holiness, with which the Handmaid of God, Paulina Aloisia de Pinczon du Sel, shone forth during her life, after her death, which occurred in the year 1820, has indeed increased daily and has spread far and wide, so that an ordinary investigation concerning this same reputation, as well as virtues and miracles, has finally taken place in the ecclesiastical court of Acqui. Such an investigation, having been completed according to the law, and having been presented to the Sacred Congregation of Rites, His Holiness, Pope Leo XIII, benignly granted that...

[*Latin ed. p. 446*]

From Sacred Congregation for the Propagation of the Faith, Rule 446, it is possible that the doubtful matter concerning the signing of the Commission for the introduction of the aforementioned cause of the Servant of God could be acted upon in the Ordinary meeting of the aforementioned Sacred Congregation, without the intervention and vote of the Con-

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sultors, even if less than ten years have elapsed since the presentation of the Informative Process in the records of the same Sacred Congregation. Therefore, the Most Eminent and Reverend Lord Cardinal Miecislaus Ledochowski, Relator of this cause, at the urging of the Reverend Father Francis Xavier Cazenave, General Procurator of the Parisian Seminary for Missions to Foreigners, and with the attentive letters of several Most Eminent Cardinals of the Holy Roman Church, Reverend Sacred Prelates, and other men distinguished both ecclesiastically and civilly, in Ordinary meetings of the Sacred Congregation for the Propagation of the Faith held in Rome, proposed the following matter for discussion: Whether the Commission for the introduction of the cause should be signed in this case, and for the purpose of what is being discussed? And the Sacred Congregation itself, after maturely considering all matters, after hearing the Reverend Father, Dom Augustine Caprara, Promoter of the Sacred Office, decided to respond: Affirmatively, if it pleases the Most Holy [Father]. On December 19, 1891. These matters were subsequently reported faithfully to the Most Holy Lord Pope Leo XIII by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation; and, with his own hand, deigned to sign the Commission for the introduction of the aforementioned cause of the Venerable Servant of God Paulina Aloisia de Pinczon du Sel. On the 24th of the same month and year.

C A L CARD. ALOISI - MASELLA, S. R. C. Prefect.

S. VINCENTIUS Nussi, S. R. C. Secretary.

[*Latin ed. p. 447*]

447 FROM THE SECRETARY OF STATE: Grace or dispensations ought not to be requested from the Apostolic See by telegraph, but in writing. Munich, January 5, 1892. — To His Most Reverend and Illustrious Lord. In order to avoid certain inconveniences that have occurred in these times, His Eminence, the Cardinal Prefect of the Secretariate of State, at the mandate of His Holiness, has instructed me to inform Your Eminence, as well as other Ordinaries in Germany, that if any graces or dispensations are to be obtained from the Roman Sacred Congregations and from other ecclesiastical institutions, they must be requested in writing, and not by telegraph. Having informed Your Eminence of this, I gladly seize the opportunity to express, from my heart, the sentiments of my greatest esteem. Most devoted servant, + ANTONIUS, Archbishop of Caesarea. To His Most Reverend and Illustrious Lord, Mr. ADOLPH FRITZEN, Bishop of Argentina. FROM THE SACRED CONGREGATION FOR INDULGENCES, MECHLINIEN. Doubt concerning admission to the Third Order of Saint Francis. For centuries, indeed, from the time of Saint Francis, the custom has prevailed that Bishops, Priests, Nobles, and the laity are admitted, privately and separately, by Franciscan priests or others who have the faculty, to the

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Third Order.

[*Latin ed. p. 448*]

448 CONCERNING the Indulgences pertaining to the habit and profession of the Secular Third Order of St. Francis, which do not pertain to any particular Congregation of the Third Order. Authors treating of this matter believe that it is preferable that those Tertiaries who can, should be enrolled in some Congregation and attend its meetings on designated days, due to the spiritual benefits that result therefrom; nevertheless, they admit that private vestitions and professions are valid, and this opinion is still maintained by the superiors of the Order of St. Francis. After the Constitution *Misericors Deus Filius*, some priests of the Archdiocesis Mechliniensis have begun to doubt this matter, and there is a danger that, from this uncertainty, the zeal for embracing the Third Order may gradually diminish, especially among priests who rarely have the opportunity to attend meetings of Congregations of the Third Order. Therefore, the following question is proposed to this Holy Congregation of Indulgences: Whether the vestition and profession of one who is privately admitted by a priest, having the authority, to the Secular Third Order of St. Francis, without being enrolled in any Congregation, is valid? The Holy Congregation for Indulgences and Sacred Relics, after due consideration of the question, responded: Affirmative. Given at Rome, from the Secretariat of the same Holy Congregation, on the 14th of July, 1891. J. CARD. D'ANNIBALE, Prefect. L. % S. A. ARCHIEP. NICOPOLIT. Secretary.

[*Latin ed. p. 449*]

449 FROM THE SOLUTION OF THE SACRED CONGREGATION OF THE COUNCIL OF PLACENTIA, dated December 12, 1891. Session 7, chapter 14, concerning reforms. SUMMARY OF THE CASE. The priest, John Vivaldi, a minor friar of the Observance, with Apostolic permission, residing, at the beginning of the year 1890, approached the Placentia Curia, requesting that Lazarus Sanviti, the parish priest of the place of Muradolo, be brought to account for 560 livres which he claimed were owed to him. He stated that in the year 1886, he had entered into an agreement with the aforementioned parish priest, by virtue of which, for the celebration of daily Mass in the parochial church, and also for certain services rendered in assisting the parish priest, he was to receive an annual remuneration of 1100 livres. He admitted that he had received the entire sum of money, in agreed installments of 275 livres after each quarter, from the month of May of that year until the month of April 1888. However, he affirmed that in the following year, from the beginning of May 1888 to the end of April 1889, during which time he relinquished his office, he had only received 540 livres. Furthermore, he added that he had used all means possible to persuade the parish priest Sanviti to fulfill his obligation, but that Sanviti

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had reduced his debt to 285 livres, and had consistently refused to pay the remaining sum. Although he could not prove this with a signed agreement, Sanviti, he alleged, could be proven by sworn witnesses, in a trial instituted for that purpose, before the Placentia Curia. After hearing the witnesses, and after the judge had instructed the parties to present their allegations, the advocate for the parish priest Sanviti asserted that an agreement had been entered into between the priest Vivaldi and the council of the fabric of the parochial church, and requested that this also be brought into legal consideration.

[*Latin ed. p. 450*]

450. The matter was brought before the court in Piacenza, and all those who had signed the agreement were present. On May 31, 1890, an interim judgment was delivered, rejecting the petition, and on September 11th of the following year, it was declared that the proceedings were closed by order of the court, and that no further witnesses, whom the parish priest of Sanviti had designated to testify after the public depositions of others, would be admitted. Subsequently, after several hearings, on October 13, 1890, the priest Vivaldi swore an oath before the judge that he had not received from the parish priest of Sanviti 275 *lire* for the months of May, June, and July of 1888. Finally, on November 26th of the same year, a judgment was issued, in which the parish priest of Sanviti was condemned to pay the priest Vivaldi 560 *lire*, as well as the costs of the proceedings, which, by a further decree, were determined to amount to 110 *lire*. Following the judgment in Piacenza, within the time allowed by law, the parish priest of Sanviti appealed to the Sacred Congregation of the Council.

A Synopsis of the Arguments. DEFENSE OF THE PARISH PRIEST.

First of all, the parish priest of Sanviti denies that Vivaldi, being a religious, had the right to bring a lawsuit, and argues that, as he himself says, he should have been immediately dismissed by the judge at the very beginning of the proceedings. Indeed, a religious person does not have the right to appear in court, and any actions taken by him, without the consent of his superior, are null and void by law, even if the matter concerns a contract that he entered into before entering religious life. *Navar. Comm. 2 De regul., Sánchez, Pirhing lib. II, tit.-1, n. 29.* Furthermore, the temporary permission to live outside the cloister, which he possessed, did not, according to the established practice of the Sacred Congregation regarding regular discipline, grant him the faculty and right to possess and administer property, since such permissions must be strictly interpreted, provided that the obligations of the religious vows remain in force. But even if it were conceded that he could bring a lawsuit, no action would be competent against the parish priest. The agreement between Vivaldi and the building committee was initiated, and the parish priest acted only as a

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mediator, or at most...

[*Latin ed. p. 451*]

PIACENTINA 451, as the appointed representative, was present. The priest, Sanviti, endeavors to prove this, based on the following, which are found in Article 1 of the Imperial Decree of December 30, 1889, ratified by ecclesiastical authority: "It pertains to the fabric [or building fund] of the parish to consider all expenses, both for materials and for persons necessary for the worship. Therefore, it is stated that the sum of 1100 livres assigned to the chaplain was obtained as follows: 680 livres were taken from the pious endowment of Dell'Ara, provided by the council of the cathedral fabric; 220 livres were taken from certain revenues, with the consent of the Bishop, from the parish's pious works; and finally, the remaining 200 livres were obtained from the collection of the parishioners. To further strengthen these assertions, he believes it is necessary not only to present the written agreement of January 30, 1889, and other documents in which Vivaldi confesses to having received money "for the fulfillment of the endowment of D. Dell'Ara"; but also a private letter from him, in which he demands the payment of money from the president of the fabric, "according to the agreements made, and the obligations imposed upon him by the moderators of the fabric and by the rector Sanviti." However, he believes that all doubt is removed by the two documents he alleges: namely, the decree by which the administrators of the pious endowment of Dall'Ara appointed Vivaldi as chaplain, and the resolution of the fabric council in which the sum of 200 livres is promised to him, if the parishioners fail to provide it. Furthermore, if the parish priest, Sanviti, was questioned by the judge, he did not deny having entered into an agreement with Vivaldi, but affirmed that this should be understood, as the documents presented demonstrate, to mean that he acted on behalf of the fabric council and ordered the execution of what had been decreed by it. Therefore, the interlocutory judgment of the Piacentina judge seemed unjust, as it was diametrically opposed to equity and the provisions of the Gregorian Code: § 85 and following. After these preliminary matters, turning to the intrinsic merits of the case, it should be noted that the solution of 275 livres, concerning which the controversy primarily revolves, appears to be sufficiently proven by the testimonies given by the witnesses under oath. Indeed, all of them, without exception, testify that the parish priest, Sanviti, in the month of July 1888, sent a sum of money to Vivaldi, which, as the recipient himself confessed to the priest Ricci,

[*Latin ed. p. 452*]

452. In Plasencia, [the matter] was investigated thoroughly. The full extent of the testimony, the record of which is now lost, is evident from what was reported by the witness Gambazza, a parish priest who, due to his

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advanced age, his character, and his religion, is not subject to any suspicion. Therefore, even the testimony of servants should be admitted, as Pihring teaches in *Lib. II, Tit. De testibus*, and Mascardus in *De probationibus*, and others, because nothing can be opposed to the truth of their testimony, and it concerns a matter that took place within the domestic walls. Furthermore, if other witnesses, in their accounts of the event, differ slightly in minor details, this is of little consequence, as testified by Schmalzgrueber in *Lib. II, Tit. XX, § III, n. 106*: "It does not hinder if they are discordant in the circumstances of time, place, and other things; for they are in agreement with respect to the same end." The parish priest, Sanviti, wished to add other witnesses to this, so that the matter might be more fully established, but a second round of testimony was prohibited by the judge. And here, he raises his complaints, recalling that, according to canon law, the presentation of more witnesses is permitted, provided that the truth may be made known. Moreover, if the request to present new witnesses, made by the parish priest Sanviti, was made after the judge, acting on his own initiative, had proceeded to the publication of the previous testimonies, this should not be to his detriment, since the presentation of further witnesses can still take place "if both parties have agreed to the publication, because a publication so made is not properly made and, consequently, is null." Schmalzgrueber, *loc. cit.* However, all of this, according to the parish priest Sanviti, was said almost in abundance, because he believes that the burden of proof rests with the plaintiff, and since he has not fulfilled this burden, the well-known rule of law applies: "the defendant is acquitted if the plaintiff does not prove." Therefore, it would seem unjust that an oath should have been administered to the plaintiff by the judge from Plasencia, either because he had not provided any, or at least not sufficient, proof, or because, on the contrary, the event itself had already been proven by witnesses. However, if the testimony of the witnesses had not been sufficient to remove all doubt from the mind of the judge, the parish priest Sanviti should have been required to take an oath.

[*Latin ed. p. 453*]

PLAGENTINA 453, so that it might be filled with the partial proof brought forth by him. Nor would it be otherwise held, even in the hypothesis admitted by the ecclesiastical tribunal, that Vivaldius has presented a partial proof: for, according to what Schmalzgrueber states, Part III, title XXIV, § 14, n. 4, "If a partial proof has been presented by both sides, the oath must be given to the defendant, as is clear from § cited above, loc. and I. admonendi 31 ff. h. t." Furthermore, he notes several defects, not only concerning the form in the procedural records, from which another argument could be deduced to undermine the judgment. Firstly, he complains that some documents presented by the opposing party were not shown, and on this matter, he affirms that not all means

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were available to him to prepare his defense. Moreover, he laments that the priest Ricci was present in the ecclesiastical tribunal while the other witnesses were being examined, and that he was then, contrary to the laws, admitted to give testimony. Furthermore, it appears that the oath was given to the plaintiff after the judge declared the process closed ex officio on September 11th; whereas, on the contrary, as the Doctors teach, it should have been given before the conclusion of the case. Moreover, he states that the words of the oath were not formulated in such a way as to correspond to the desired proof.

DEFENSE OF VIVALDI. On the other hand, the exception presented by the other side seems to be improperly proposed, by which the right to stand in judgment is denied to Vivaldius. This is a dilatory exception, which should not have been raised in the stage of appeal, but at the very threshold of the judgment, that is, before the commencement of the litigation, as is derived from chapter 4, On Exceptions, to be proposed. But furthermore, a Rescript is presented by which Vivaldius was granted, in order to provide for the needs of his family, a dispensation commonly called "secularization" by the S. C. concerning Regular Discipline, "as long as the necessity persists." Indeed, if, as Schmalzgrueber teaches, Part III, title I, book II, a religious living outside the cloister with the permission of his superiors, for example, for the purpose of studies, can undertake the duties of the plaintiff, because, he says, the granted permission to reside outside the monastery implies also the permission to carry out those things which are necessary.

[*Latin ed. p. 454*]

454. PLACENTINA, ut pacifice vivat et sua iura conservet; ne gratiae Supremi Principis omnis effectus adimatur, profecto dicendum est iure repetendi coram iudice quod sibi debebatur, Vivaldium minime carere. Nec maius robur inesse alteri exceptioni videretur, qua parochus Sanviti contendebat, Vivaldium non secum, sed cum fabricae consilio conventionem iniisse, ideoque et illud esse ad iudicium vocandum. Nam cum ipse die 20 Februarii 1890 obligationem a se assumptam iudicialiter confessus fuerit, non poterat deinde contrarium asserere, iuxta abbatem in cap. praeterea 7 de testis cogend. quia « confessio in continenti potest revocari non ex intervallo ». Hac autem confessione omnia argumenta in contrarium allata penitus destrui videntur, eo quod « confessio est plenissima probatio, ita ut superet et infringat omnes alias probationes factas per testes et instrumenta in favorem confitentis contrarium ». Schmalzgrueber, Part. III, Tit. XVIII, § 2, Rota in nov. p. 3, decis. 758, n. 2; decis. 191, n. 62, p. 4, tom. 1, decis. 157. Ceterum, quidquid sit de iis qui parocho pecuniam ad mercedem capellano persolvendam suppeditabant, quae sacerdos Sanviti deduxit, nonnisi sponsionem partialem seu cautionem consilii fabricae ad summum ostenderent.

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Quod confirmatur epistola a parocho Vivaldio missa die 2 Febr. 1889. In vado igitur posita conventione a parocho cum Vivaldio inita, haud inficiandum esset onus probandi factum solutionis ad Sanviti pertinere. Verum equidem est, generatim loquendo, probationes ab actore in medium proferendas esse, sed uti egregie tradit Schmalzgrueber, loc. cit., tit. XIX, § 2, « Si reus opponat exceptionem affirmativam, h. e. si excipiendo aliquid asserat, ex. gr. si petitus solutionem a creditore dicat se iam solvisse, tunc suscipit in se onus actoris quoad oppositas a se exceptiones ». Ratio est quia agere -is videtur qui exceptione utitur, et reus, iuxta vulgatum axioma, excipiendo fit actor. I. agere I. ff. de excep. praescript. etc. Parochum vero in solutionis peractae probatione defecisse, placentinus iudex tenuit.

[*Latin ed. p. 455*]

PIACENTINA. 455 The complaint of the parish priest of Sanviti regarding the prohibition of further presentation of witnesses does not appear to be based on sound legal grounds. Indeed, in chapters concerning fraternity and in the chapter concerning the *test*, and also in Novella 94, chapter 4, it is explicitly stated that, after the publication of testimonies, witnesses cannot be presented, because, as the jurists explain, there is a danger that some witnesses might be suborned, if the parties, having learned from the publication that certain witnesses had not testified as they expected, might try to influence them. Furthermore, it appears from the procedural acts that the publication of the testimonies was made with the tacit consent of the parties. Moreover, it must be noted that not only did the parish priest of Sanviti fail to provide sufficient proof, but several and weighty presumptions arising from the documents presented contradict him. For example, if one examines the signed receipts for payments received from Vivaldio, in which the latter affirms that he is a creditor (libellus 275), while repeatedly stating that the remaining sums were "paid in advance," it does not seem presumable that the parish priest merely acquiesced to this in order to avoid disputes, nor that he rejected the irregular receipts once and for all. Furthermore, although it may have been possible for the parish priest of Sanviti to have paid Vivaldio libelli 275 during the month of July, and other libelli 150 on August 6th of the following year, the judge nevertheless believes, perhaps considering the parish priest's economic situation, that two such payments made within such a short period of time do not lend much credibility. In addition, there is an unsigned letter written by the parish priest and sent to the chaplain. From this letter, although undated and without a salutation, it appears that the parish priest wrote before the last quarter of the year, that is, in the last days of January 1889, and that at that time Vivaldio was still a creditor for several libelli; which, of course, could not have been written after the payment made in July 1888. Finally, if one considers the rubric in chapter 2, title *De praesumptionibus*, which states "a violent presumption carries with it a definitive effect," and the

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rubric in chapter 10 of the same title, which states "more effective proof is required from him who wishes to prove that which is not probable," it does not seem that the decision of Piacentina infringes upon what is prescribed by law to any significant extent.

[*Latin ed. p. 456*]

486. The [court] judged that full proof had been provided by the accuser. However, it is wrongly asserted that an oath should be demanded from the accused; for as Gregory IX states in chapter 36 of *De iureiurandi*: "An oath can be demanded of the accused to demonstrate his innocence, provided that the judge, considering the circumstances of the persons and the case, deems it necessary to demand it from the accuser." Therefore, Pirhing, in the aforementioned passage, believes that this matter should be left to the judge's discretion, "so that he may demand it from whomever he believes will best lead to the discovery of the truth." Finally, with regard to the irregularities that are said to have been admitted in the process, it should be noted that the formula of the oath does not correspond to the exception proposed by the parish priest Sanviti, the declaration <'d'ufficio chiuso il processo'> does not signify a conclusion in the case, but only the end of the discussion; and that the remaining points lack solid proof, and could therefore be asserted freely and equally freely denied. With these observations in mind, the question was raised as to whether the sentence of the episcopal court of Piacenza should be confirmed or overturned in this case.

RESOLUTION. After considering the matter, the Sacred Congregation [of the Holy Office] decided on December 12, 1891, to respond: The sentence should be confirmed, and furthermore.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. A confession made in court constitutes the most complete form of proof; in such a way that it surpasses and invalidates all proofs made by witnesses and documents in favor of the one who confesses.

II. The parish priest, having confessed the matter judicially, had undertaken an obligation upon himself, and therefore he should have satisfied that obligation himself, and should have proven the fact of the solution he had carried out.

[*Latin ed. p. 457*]

ARETINE CANONS, January 23, 1892. Session 25, chapter 6. Concerning the reform of the Cathedral of Arezzo, situated on a hill outside the city. Innocent III, approving the wishes of the clergy and the people, in order to promote < concord within the city and the benefit of the Church >, united the urban church of Saint Peter the Greater with the cathedral, and by apos-

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tolic letters, dated May 1st, 1203, granted the prelate and canons permission to transfer with all rights and privileges to said church, and to reside there. Then, when the cathedral church was moved within the city walls, perhaps the beginning of controversies arose between its clergy and the illustrious church of Saint Mary of the People, which, as the Bishop Albergotti writes, had held the leading place in Arezzo until then and had performed the duties of the distant cathedral. About half a century later, Bishop William, observing "how much discord had persisted between these churches up to that point, especially on the occasion of the feast of Saint Donatus, our patron, which was primarily intended to be celebrated in both churches, and because of certain other matters by which it seemed that there were two heads in the city of Arezzo, like a monster," on May 9th, 1250, issued a decree in which he established the following: "We have considered that the aforementioned church of Saint Mary of the People should be united with the cathedral church, and we unite, we add, and we incorporate, granting to the same church the honors of the cathedral church;... we decree,... that the canons of both churches shall hold canonical status in both churches, and alternately and jointly shall be admitted to readings, discussions, business matters, and contracts; so that through this union, more humane privileges and more commendable customs of both churches shall be commonly and equally observed within these churches by the canons of the aforementioned church of Saint Mary of the People, who shall render obedience and reverence to the prelate of Arezzo, and shall show him due and devout respect, just as the canons of the cathedral church; and that the prelate and canons... COMPENDIUM OF THE MATTER.

[*Latin ed. p. 458*]

458. Let the canons establish a residence in Arezzo, near the aforementioned parish, whenever and as it may please them and they deem it expedient. Furthermore, We wish and command that each canon be content with his assigned duties and benefits, as is currently observed and has been observed until now. Such a decree was signed by both chapters. Innocent IV ratified it, and, with the inclusion of the entire text, confirmed it by a document dated October 30, 1250. However, from these things, harmony did not arise. Indeed, in the year 1252, the chapter of the parish of Saint Mary sought to be admitted "to the secrets of the chapter in the church of Arezzo, and to the daily distributions, and to equality of benefits with the canons of the church of Arezzo." However, concerning this matter, after the Roman Pontiff appointed Cardinal Giles as a judge, the parish priest sent a messenger. Subsequently, the opinion of the Cardinals Medici and Salviati, inserted in the Brief of Clement VIII of July 8, 1596, with the clause removed and the decree annulled, was presented, in which the union, accepted by the parties and effective for many years, was revoked and restored to its former observance, so that "the same collegiate church of Saint Mary, and

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its chapter and canons, shall be considered and held to have the honors and privileges of the aforementioned cathedral church, and shall possess and be entitled to them, and the canons of the collegiate church shall be held, named, and considered as belonging to the cathedral church. Furthermore, in the same decree, it is decided that "elections, deliberations, and business of both chapters, with the exceptions mentioned below, shall be treated separately in each church and chapter, as they pertain to one or the other... that the archpriest and dean of the collegiate church shall be elected and considered elected together in the synod, just as the prelate and canons of the cathedral church, or those chosen from among them, may be appointed by the Apostolic See, and that they may be entrusted with the knowledge of causes and the execution of letters and other similar matters... In processions, even synodal ones, funeral ceremonies, and other acts and places in which both chapters, their dignitaries, and canons are present,..."

[*Latin ed. p. 459*]

We decree that, whether under one banner or two, the following should be observed: that the Prefect, Archdeacon, Primicerius, and Dean of the Cathedral should precede and have precedence, and successively, the Archpriest of the Collegiate Church, then the Canons of the Cathedral, and afterwards the Dean and Canons of the Collegiate Church, and successively, the Mansionaries of the Cathedral, and finally, the Mansionaries of the Collegiate Church, as is presently observed in some cases. Furthermore, we declare that whenever the Canons of both churches happen to be present together in either of the aforementioned churches, whether on the occasion of a procession, or at funeral services, or for any other reason, the Canons of the Cathedral should reside and hold sessions from the side of the Gospel, while the Archpriest and Canons of the Collegiate Church should reside from the side of the Epistle; and in other matters, the Archpriest should be recognized in the fifth place, as stated above, etc." After such a ruling, and others, in the year 1639, with the parties again disputing, a decision was made by Caesar Argello, Vice-Auditor of the Camera, entirely favoring the Chapter of St. Mary's Parish, in which the effects of the union were clearly outlined: "That all other matters, as those concerning common interests, should have been and should be treated jointly and in conjunction by both Chapters, and should be explained and agreed upon together, such as in the election of a Vicar when the episcopal see is vacant; also in the reception of a new Bishop, and in the transfer of possession to him, in the administration and distribution of the spoils of the deceased Bishop, etc." This ruling, however, having not been accepted by the Chapter of the Cathedral Church, the matter was brought before the Sacred Roman Rota, where it was debated several times and before many, and was decided in favor of the Chapter of St. Mary's Parish. Indeed, on April 1, 1647, a decree was issued by the Most Reverend Albergati, stating: "That the Union,

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the Apostolic Letters, and the aforementioned ruling (namely, that of the aforementioned Vice-Auditor of the Camera, Argello) should be restored to their original observance, and should be restored and reinstated, as we restore, reinstate, and command to be observed in all things and through all things, as contained and prescribed therein: and that all honors, privileges, and rights whatsoever..."

[*Latin ed. p. 460*]

460. To the cathedral church of Saint Peter in Arezzo, and to its chapter and canons, whatever their competence may be, it has also belonged, and belongs, to the church of Saint Mary of the People, and to its chapter and canons; and it has been, and is, communicated and common, as if said two chapters were one body and one and the same chapter, united universally and indefinitely under one head; namely, in that the common affairs and the common interests concerning both chapters are treated together, unitedly and jointly; in the election of the Vicar, when the episcopal see is vacant, in the reception of the new bishop and in the delivery of possession to him, in the collection and distribution of the goods of the deceased bishop, that the same manner, which is observed in the cathedral church and in the church of Saint Mary of the People, both in going and in sitting and standing, be observed in all the churches of the City of Arezzo and in others, in which said two chapters may happen to intervene. To this was added another decree on March 8, 1652, before Verospio, confirming the aforementioned, as stated above; wherefore, our definitive judgment, as a third and conforming one, has passed into judgment in the matter, and is not subject to any suspension of appeal; and wishing to proceed to the execution of the aforementioned judgments and of the matter already judged, we warn... you, Reverend Canons and Chapter of the Cathedral Church of Saint Peter in the City of Arezzo, principally, that... you observe said union, the Apostolic Letters and the judgment pronounced by the Most Reverend Cardinals of Florence and Salviatum, as contained and prescribed therein, and that you allow and permit the Reverend Canons and the Chapter of the church of Saint Mary of the People in Arezzo, both present and future, as one body and one chapter, to enjoy, possess, and partake equally of the honors, privileges, and rights that belong to you, and to use them. And that you treat them indifferently in the election of the Vicar when the episcopal see is vacant, in the reception of the new bishop, in the delivery of possession to him, in the collection and distribution of the goods of the bishop.

[*Latin ed. p. 461*]

ARETINA 46, may the deceased, together with you, be received and admitted, etc." For some time, it seemed that the disputes had ceased, although a lasting harmony was not yet established. Indeed, on July 13, 1743,

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the Apostolic Nuncio, residing in Florencia, wrote to the Bishop of Aretina, requesting that he investigate the reasons for the disagreements and disputes that were constantly arising between the chapters of the Cathedral and the Collegiate Church, in order to resolve them. Nevertheless, it does not appear from the records whether the will of the Supreme Pontiff was demanded for execution. Furthermore, on August 8, 1744, Flavius Chisius, auditor of the Apostolic Camera, at the request of the chapter of the Cathedral, declared in his notification that no title other than that of the canons of the collegiate church, by which they had been canonized in the opinion of Cardinals Medices and Salviati and in subsequent royal decisions, belonged to the canons of the Collegiate Church of S. Maria, "and therefore, no right, no action, belongs to them to call themselves the concattedral." Nevertheless, when the same canons subsequently presented a petition to the Congregation [of Rites], they did not hesitate to renounce their church and use the title "Concattedral Aretina," and the same Sacred Congregation used this title in its response on July 3, 1745. Soon after, in the year 1746, Apostolic Letters *s. m.* of Benedict XIV were issued in the form of a Brief, in which the two Decrees of the Sacred Congregation of Rites, to be explained below, and the entire preceding text are approved and confirmed, and to them is added "the inviolable strength of the Apostolic authority." The aforementioned Decrees are as follows. In the first, dated July 21, 1668, in response to a request from the canons of the Collegiate Church of S. Maria, as to whether, by virtue of the right of union, the regular clergy of the city of Aretina should proceed in funerals under their own cross, as it had been declared that they should proceed under the cross of the chapter of the Cathedral, the following response was given: "The privilege of the Cathedral church of S. Petri does not extend to the chapter of the church of S. Maria, unless they proceed together." The other Decree was issued on September 22, 1745. "His Holiness, Pope Benedict XIV, ordered that a Decree be expedited through the secretariat of the Congregation."

[*Latin ed. p. 462*]

462. The document concerning sacred rites, in which it is declared that the designation of "concatedral" granted by the canons of the parish of Santa Maria in Arezzo is attempted, invalid, and null, and furthermore, that such a designation was used in a decree of the aforementioned Sacred Congregation, published on July 3rd of the preceding year, due to an error by the Secretariat of the same Sacred Congregation, as is declared by the force of the present Decree. However, the chapter of the cathedral affirms that the civil authority denied its consent to this. Four years later, both chapters jointly presented prayers to the same Supreme Pontiff, so that he might deign to grant them certain insignia of honor in order to foster mutual concord. To which, benignly assenting, Benedict XIV, by Apostolic Letters dated August 6th, 1750, granted the requested insignia to "the canons of

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the cathedral church of Arezzo and... of the church of Santa Maria, perpetually united to the same cathedral church." What subsequent observance occurred, especially regarding the rights assigned to the chapter of Santa Maria by royal decisions, will become clear from the arguments of the parties. It is only fitting to mention that the Bishop of Fiascaino wrote in certain commended letters transmitted to the Holy See on May 14th, 1857: "The chapter of Santa Maria enjoys in practice the same privileges, distinctions, and prerogatives as another chapter of the Cathedral; and both chapters participated together in the recent election of the capitular vicar and in the subsequent installation of the new Bishop." In more recent times, due to unjust laws by the civil authority, by which collegiate churches in Italy were declared suppressed, the chapter of Santa Maria, in order to avoid the announced suppression, appealed to the highest authority, arguing that its collegiate body, being a concatedral, was not subject to suppression. And indeed, it succeeded in obtaining favorable judgment once and again. But, as they say, Regium, an expert in matters concerning the confiscation of Church property, noted from the civil law that only twelve canons were allowed in one.

[*Latin ed. p. 463*]

ARETINA 463, and that each cathedral should be maintained, he assigned six chapters to the Chapter of St. Peter, and six chapters to the Chapter of St. Mary of the People. Then, the canons of the cathedral church, lest they lose half of their patrimony, also sought recourse to the same council, from which the previously issued judgment was entirely revoked. Soon after, the Chapter of St. Mary of the People, having suffered a loss of its assets on July 17, 1876, with the consent of ecclesiastical authority, brought a suit before lay judges, and also summoned the Chapter of the cathedral church to join in the litigation. In the Aretine court, the case proceeded favorably for the Chapter of St. Mary of the People, and judgment was rendered in its favor. However, when both the treasury and the Chapter of St. Peter appealed to the Florentine court, there the judgment of the Aretine magistrates was upheld on July 5, 1887. Shortly thereafter, with the death of the archpriest of St. Mary of the People, and the canons of St. Peter being suspected, certain words in the Apostolic Letters concerning the provision of a new archpriest appeared to have been included, which, they claimed, gravely harmed the rights of this cathedral, and they sent a protest to the Chapter of the People. On the day that the archpriest was elected, the discord concerning this matter flared up anew. For, in the beginning of June 1890, the Chapter of St. Mary of the People, in a suppliant petition, recalling the rights derived from the union and the judicial sentences pertaining to it, implored the Supreme Pontiff to deign to warn the canons of St. Peter not to, in the future, injure the rights of their brethren of the People, especially in the case of the election of a capitular vicar. When this became

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known to the canons of St. Peter, the petition of the Chapter of St. Mary of the People appeared to them to be ambiguous, and they requested the Sacred Congregation to deign to decide whether the Chapter of St. Peter the Apostle is the sole, true, and effective chapter of the Aretine cathedral; and whether the church of St. Mary of the People is not a cathedral, or a co-cathedral; and consequently, whether the Chapter of this church enjoys any of the rights and privileges which belong exclusively to the chapter of the cathedral. Then, the Chapter of St. Mary of the People pri-

[*Latin ed. p. 464*]

464. Further elucidating the matter concerning Arezzo, he reiterated that he had requested that it be defined: "that the chapter of the church of Saint Mary of the Town of Arezzo be united in the principal manner with the other chapter of the cathedral church, so that it may use, enjoy, and possess all the rights, honors, and privileges which pertain to the chapter of the cathedral church, and may share them equally, and that it should be admitted to the election of the Vicar, when the episcopal see is vacant, to the reception of the new bishop, and to the distribution of the spoils of the deceased bishop, and that, finally, the same procedure should be observed by both chapters in the procession and sessions concerning the churches of the city of Arezzo, to which it may pertain." Furthermore, "the cathedral of Arezzo is one, and two churches are united in regard to their cathedral status (S. Rota, 2 Decisions, April 1, 1647, to Corrado), by which union both churches are constituted as one cathedral" (May 8, 1652, before Verospio). *Synopsis of the Discussion. DEFENSE OF THE CHAPTER OF SAINT MARY OF THE TOWN.* Remembering the petition of this chapter, as well as the fact that it, and indeed with even more extensive words, has been affirmed many times by legitimate authority, and especially by the decisions and sentences of the Sacred Roman Rota, the last of which has passed into a matter judged, he argues that it shines with such evidence that the opponents are to be condemned as acting rashly. Then, he scarcely touches upon Bishop William Ubertinus, who, in the year 1250, by the decree mentioned above, united and aggregated the Church of Saint Mary of the Town with both chapters, the cathedral and the other, not only because "in the City of Arezzo there seemed to be two heads, like a monster," but also because, due to hostile incursions, the same cathedral church "remained desolate and deprived of the solace of the clergy"; that episcopal decree, indeed, was entirely inserted in the Apostolic Letters by Pope Innocent IV, and received confirmation and strength. He also indicated that the union was restored to observance by a sentence, from the year 1596, by the Cardinals.

[*Latin ed. p. 465*]

ARETINA 465. Alexander of Florence and Anthony Mary Salviati, by

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mandate of His Holiness Clement VIII, who subsequently, on July 8th of the same year, confirmed the aforementioned judgment with a clause removed and a decree of invalidity, and afterwards, the judgment on this matter issued by Caesar Argello; all of which were made known to the Most Eminent and Reverend Fathers. He then requests that the two most recent decisions and judgments, which were issued by the Sacred Roman Rota in this matter on April 1st, 1647, and on March 8th, 1652, be clarified, the first of which is found in Part V, Recentior, under number 37, and the second in Part VI, Recentior, under number 224, of which the principal parts have already been mentioned in the case at hand. In that hearing on April 1st, 1647, the Reverend Father Albergatus definitively judged that the union should be restored and that the sentences should be revoked to their previous state, and he decreed that this applied to the chapter of Saint Mary, which is what is being requested today, namely, "all honors, privileges, and rights whatsoever pertaining to the aforementioned Cathedral Church of Saint Peter and its chapter and canons, in any way whatsoever." However, this judgment, on behalf of the canons of Saint Peter, was vigorously challenged on both grounds of validity and justice, and it is recalled that a fuller confirmation was obtained from the oracle of the same Supreme Tribunal before Verospio, who also declared that the final judgment had not been suspended by any remedy of appeal, and he commanded its observance under the threat of penalties. Indeed, it is clearly established in law that a res judicata is to be held as true, and that it imposes an end to the controversy, so that no one can any longer be heard against it. Chapters 2, 4, and 20, Concerning judgments and matters judged; Chapter 5, Concerning deceit and contumacy, law 25, Concerning the status of a person, law 207, Concerning the rules of law. S. H. C. in Bononienses. - In Interpretations, decree of May 14th, 1881 (1). I. 1 ff. Concerning matters judged. Rebuffini, treatise on appeals, article 1, gloss 2, number 18, volume 3. Scaccia, Concerning appeals, question 12, number 6. For a res judicata makes black white and white black, and is equivalent to any privilege. (1) École, Volume XIV, 347. Acta, Volume XXIV, page CCLXXXIV, 30.

[*Latin ed. p. 466*]

466. Concerning the Arezzo jurisdiction or institution, as Felino states in chapter "Quoniam contra," number 31, regarding proofs, section 61, number 2; the Rota, before Pamphilius, decree 218, number 6, and before Priolo, decree 411, numbers 5 and following. These matters, it is considered, hold greater weight, because the practice, observed for more than two centuries, namely up to our own times, has gained strength. Indeed, from the very beginning, it is reported that when a certain cleric from Arezzo, named Fabritius Guidi of the Romans, having reached the age of fifteen, while the dispute was still before the judges, was nominated to the canonry

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and the benefice of the church of Saint Mary, after the judgment was rendered, he was obliged to request a suitable dispensation and exemption from the Apostolic See, because "the canonry and the benefice of the aforementioned [church] are not part of a collegiate church, but of the cathedral church, and therefore possess the sacred subdiaconal order attached to them." It is said that this dispensation was granted by Alexander VII, with letters dated June 18, 1655, and that "the seal of lead, with its cord, belonging to the chapter of the church of Saint Mary, has constantly participated in the election of the Capitular Vicar, during the vacancy of the episcopal see, in the administration of the spoils of the late Bishop, in the reception of the new Bishop, and in other matters which are usually carried out by cathedral chapters." This practice, it is affirmed, has been most convincingly demonstrated by countless documents deposited with the Sacred Congregation. If any actions are presented to the contrary, according to the proponent, they demonstrate nothing other than the stubborn spirit of the canons of Saint Peter, who have attempted to injure the rights of others and to disregard due obedience to Apostolic mandates. Furthermore, such actions, however numerous or significant they may be, cannot provide a valid argument to the opposing side, as is clearly evident from the aforementioned Rota decree 224, part XI, recent, numbers 5 and following: "The union having achieved its effect and being demanded for execution... subsequently, it was confirmed by His Holiness Clement VIII by a decree that removed and annulled the clause, and..."

[*Latin ed. p. 467*]

ARETINA 467, explicitly derogating from any customs whatsoever, to the contrary, from which not only is any contrary usage entirely considered abrogated, according to the text in chapter concerning the causes, C. De transactPet in L ff. of the same title, etc., but furthermore, the power to introduce something new through acts contrary to the aforementioned confirmation is taken away, as noted by Felin in chapter "cum accessissent" n. 30 De Constitut., Alex cons. 196 n. 13 lib. 2, Ruix cons. 13 n. 13 lib. 2, Gonzal. ad regul. 8 gloss. 67 n. 12, etc.; and furthermore, to interpret otherwise, as noted by Doctors, in chapter "Quia diligentia De elect." etc. - Hence, all acts undertaken contrary to the observance of the union, whether they preceded the decree or followed it, seem to be nullified, since in both cases they are rendered invalid by the Apostolic Letters, and are neither fully proven to have been executed, nor are they valid concerning the other chapter of the collegiate church.

Furthermore, nothing contradicts this, nor do two decrees of the Most Holy Roman Pontiff, reported and approved by Benedict XIV in the Brief of June 11, 1746. For in the first place, the validity of the Brief is considered to be highly doubtful, since, if one were to heed it, it presents the most evident signs of deception and fraud. Indeed, it is stated therein that "the

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denomination of the Concathedral, recently usurped from the canons of the Church of Saint Mary in Cento, is attempted, invalid, and null." This is very far from the truth. For it is remembered that the canons of Saint Peter, more than two hundred and forty years ago, or more than ninety-five years before the date of the Brief, were accustomed to grant the denomination of cathedral or concathedral to the Church of Saint Mary in Cento, indeed, maintaining that only the honorary denomination of cathedral belonged to that chapter, and not substantial rights. This is proven, not only from what has been related, but especially from another Decision of the Sacred Rota, of July 2, 1651, before Corrado, which is published and found in Part XI, Recentior, under n. 156. Indeed, there, in nn. 5 and following, the following is stated: "Nor does it impede that the aforementioned union was not fully and absolutely and substantially restored..."

[*Latin ed. p. 468*]

468 ARETINA, only insofar as it concerns the honorary designation of the cathedral and the privileges granted to the aforementioned church of Saint Mary and its canons, as it is understood by those informed about the canons of the cathedral, based on a careful interpretation of the text. For such an interpretation appears entirely contrary to reason and to the words, and to the just and correct meaning thereof. Indeed, it is certain that the aforementioned union was, in ancient times, established for the sake of peace, so that two chapters might be truly and effectively united into one body, in order to avoid the contentions and scandals that arose from their division. Furthermore, the words themselves, as is evident from what has been stated above, indicate that the aforementioned union is restored to its former observance, truly, effectively, and with effect, and not merely to a pretended honor and designation. Finally, with sound and correct judgment; for since the ancient union, by virtue of which the aforementioned two churches were united into one cathedral, and their chapters were truly and effectively united into one body, as is evident from its text, has been restored to its former observance by the aforementioned decree, it follows that the aforementioned churches, along with their canons, are certainly restored to that very state, place, and rank in which they were established and constituted by the force of the union (except for the acts specifically excepted in the same decree), according to L. Quod si minor, etc.... so that all rights whatsoever attached to the dignity of the cathedral, both for the canons of each church, are equally common and pertain equally to them, as a single cathedral chapter, according to the Glossary on the chapter "Et temporis," etc. Those things, however, which pertain to each individual body and college, abstracted from the dignity of the cathedral, remain distinct. For it is not considered absurd in this matter, in which the tenor of the union and the sentence, and the will of the Supreme Pontiffs who approved and confirmed it, must be most carefully considered, as Bald. cons. 359, etc.

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"Indeed," concludes the speaker, "since it is clear from these things that, more than ninety-five years ago, the aforementioned decree granted even the opponents of the cathedral designation of the church of Saint Mary, it is certainly not understood how..."

[*Latin ed. p. 469*]

AREZZO 469: It could be said that, for this reason, such a designation was attempted and recently introduced there. Therefore, in order that a grave injustice not be done to the most wise Pope Benedict XIV, it seemed that the object of the Brief had been extorted only through deceit and trickery, and consequently, that the Brief itself was invalid and null. However, even granting that the aforementioned Brief does not suffer from any invalidating defect, the adversaries, if we are to listen to them, would gain nothing. For they contend only about the name, and they deduce this from the words: "the designation of the cathedral church is attempted, invalid, and null." But here, the defender recalls that the patron of this designation granted the "chapter of the church canonically and perpetually united to the cathedral" to the church of St. Mary of the People in another Brief of August 14, 1750. Moreover, he continues, that previously, and especially on May 12 and June 14 of the year 1748, the chapter of St. Peter had called the church of the People only by the name of "collegiate church," and then, on August 22 of the same year, it declared that "the designation or denomination of the collegiate church had occurred through error and misunderstanding, and therefore it wished to be considered as not expressed or intended; since, indeed, it should not be designated and called in this way, but the church of St. Mary of the People should be perpetually and canonically united to the cathedral of Arezzo, as it is called and designated in the acts of the episcopal court." Furthermore, in another of the decrees inserted in the aforementioned Brief, it is stated: "Since it is known that the chapter of St. Mary was united in the year 1250 by the Bishop of Arezzo to the cathedral chapter with the communication of all honors, privileges, and prerogatives," which is diametrically opposed to the current book of the canons of St. Peter, in which all rights and privileges of the cathedral are denied to the chapter of the People. However, he warns that even more serious matters must be considered.

[*Latin ed. p. 470*]

470 ARETINA throne. Already, the executionary decree issued by the Most Reverend Doctor Verospio, following a unanimous judgment, has been made known, which concludes as follows: "We declare that, with regard to you and all those who oppose you, and those who rebel against and obstruct the aforementioned canons and the chapter of the church of Santa Maria, and who, in any way, give assistance, counsel, or favor to those who obstruct them, whether publicly or secretly, directly or indi-

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rectly, through themselves or through others, from this moment forward, and conversely, individually and collectively, to those canons mentioned above, we impose the censure of excommunication: and we proclaim this in all churches and monasteries." And further, it is added: "And if, perhaps (which we do not believe) the aforementioned canons and the chapter of the cathedral... should neglect or refuse to obey, they will incur, as stated above, the aforementioned penalties and censures, and we command that the aforementioned Reverend Doctors, canons, and the chapter, and the other opponents... be publicly declared excommunicated, and that others be instructed to denounce them..." And this is not enough; but, the advocate states, the maximum aggravation of penalties is added, and finally, the secular arm itself is invoked. With these things established, the advocate states that the modern canons of San Pietro, although with much artifice and ingenuity, have given assistance to the treasury in completing the spoliation of the church and chapter of Santa Maria. However, he asks whether, while they are currently involved in this controversy, and especially if they persist in this opposition, they can escape the aforementioned penalties and censures, which have been imposed by a final judgment and by apostolic authority. And it is believed that an answer can be given to this question, if the true cause that motivates them to oppose is considered, which, it is said, is obscurely stated in their letters of August 2, 1890, where it is read that the capitulars of Santa Maria have presented petitions to the Most Holy [Father] so that they may obtain "assistance and defense in the preservation and exercise of their alleged rights after the judgment of the Court of Civil Appeal of Florence of June 18 and July 5, 1887." These words...

[*Latin ed. p. 471*]

ARETINA 471 believes that the following arguments can be derived from what the Reverend Joseph Conti, "in his capacity as a delegate for legal matters of the Most Reverend Chapter of Saint Peter in the Cathedral," did not hesitate to present before a lay judge on November 23, 1885, namely: "that whatever the effects of the union of the collegiate chapter of Saint Mary of the Parish with the chapter of the cathedral of Saint Peter may be, it is certainly true that every effect of said union necessarily ceased due to the provisions of the law of August 15, 1867, which made the combination of the union impossible, ordering the suppression of all chapters of collegiate churches." Furthermore, when a judgment is referred to the Most Excellent Preceptors on a matter of this kind, the advocate presents what Baldus states in *Margarita* concerning Innocent, in the section *reperto* under the word "Civitas": "A city, a college, a church, all these things can be destroyed by the authority of a superior, for a known cause, and then they lose all the privileges of the city and the college, etc. But if a monastery, church, or city is oppressed, seized, and destroyed by brigands, thieves,

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or tyrants, etc., nevertheless, it continues to exist in some sense, and the soul, so to speak, exists without a body, and retains all the privileges; and other rights, which existed by habit, are reduced to effect by the very law. And the reason for this difference is that when something is destroyed by law, the title is annulled, but a calamity that occurs in fact does not take away the title nor the name." To this, Lotterius in *De re Beneficiaria*, book 1, question 14, number 107, and Piton in *Disputationes Ecclesiasticae*, 8, number 17, etc., agree. Finally, the advocate states that what he has presented thus far is so clear that even the smaller, but more sound, part of the Chapter of Saint Peter did not wish to be considered a participant in the offense against the Parish Church. For, as it is clear from the very letters sent to the Sacred Congregation by the adversaries on August 2, 1890, of the twelve canons, three were summoned "with expression of cause" and did not participate in the chapter elections; a fourth, although present, abstained from giving his vote; and the fifth considered it absolutely reprehensible to oppose the petition of the dean of the chapter.

[*Latin ed. p. 472*]

472. DEFENSE OF THE CHAPTER OF SAINT PETER. On the other hand, the defender of the chapter of the cathedral asserts that the chapter of Saint Mary of the People contends that a union between the two cathedrals was initiated by the Bishop William, and that in the very first part of his address, he demonstrates that the aforementioned church of Saint Mary never previously possessed the dignity of a cathedral. He recalls that the ancient cathedral, built outside the city in the fifth century, caused a delay for the Bishop and canons until the year 1203, when the church of Saint Peter was united to it as a cathedral. Furthermore, he states that this [church of Saint Peter] is entirely different from the church of Saint Mary of the People, and that this is proven by countless documents, in which it is referred to under the names of the episcopate, the domain, or the canonry of Saint Donatus, and also by the authority of the commentary of Bishop Albergotti, in which such an opinion is refuted. Moreover, from the decree of union of the year 1250, and from the very words used by Bishop William, it is clearly evident that in the city of Lucca, two [churches] appear to exist, but in reality, there are only two cathedrals. But these matters, which are also to be expanded upon separately in a historical synopsis, are mentioned here only in passing. Having stated these premises, the speaker demonstrates, through the decree of union, that the church of Saint Mary of the People could not have acquired the dignity and rights of a cathedral, recalling from *Devoti Inst.*, Book 2, title 14, section 2, paragraph 18, that there are three kinds of unions, namely, subjective, incorporated, and equally principal, the last of which is "by equal right, without altering the nature or status of either," and as Cardinal De Luca writes in *Miscel.*, discourse 1, number 19, "it is especially used in cathedrals." Indeed, he

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says that in this case, the parties are in agreement that it is not a subjective union that is being discussed, but rather that the entire question concerns the other two kinds. The speaker maintains that in this case, an equally principal union exists, so that each church retains its own nature and rights, and that both are one head, and therefore, he considers the opinion of the opponents to be to be rejected, who, if you listen to them, admit that an incorporated union and an equally principal union can occur together. Therefore, he recalls the effect of an equally principal union in law.

[*Latin ed. p. 473*]

It is necessary that both churches remain in the same state as before, as was the case before the union, and as Francis writes in *De ecclesia catholica*, chapter 8, paragraph 143: "If one church was a cathedral, and the other an abbey, the prelate will be the bishop of one, and the abbot of the other; argument, text in chapter 2 on religious houses, because through such a union, the church does not change its status: *c. Felix* 16, question 1, and by the text in *c. De quorum, de consecrat*, distinct. 1, etc." Gagliardi, in *De benefic*, chapter 4, paragraph 5, also states this. It is considered to have been definitively the case in the union of Bishop William, in which it was stipulated "that the archpriest and canons of the aforementioned parish should be subject to the prelate of Arezzo, and should render obedience and reverence to him," yet each retains his own rights, one having primacy, the other a lower order. Furthermore, it is affirmed that the change of status is not found, not only because the Bishop decreed in the union that each canon should be content with the specific duties and benefits assigned to him, as is observed among them now, and has been observed until now, "but also because, according to the opinion of Cardinal Giles, the papal legate, and the Cardinals Medici and Salviati, who announced the elections, the treatises and affairs of both chapters should be treated separately, in each church and chapter, as they pertain to each, with the following exceptions." It is noted that the following, which are contained in the decree, designate nothing common to both, except for the just distribution of honors among the chapters, in seating or in appointing, when the same public supplications occur, either in the same church or for the same funeral. Then, in the year 1643, it is noted more clearly that something else was added, when, with only two canons residing in the cathedral of Arezzo, Pope Pius II created and established four new canonries in the same church. However, as many existing canons did not object that the Supreme Pontiff was concerned about the diminution and detriment of the divine cult in the cathedral, so it is known that, later, the new canonries were not assigned to either church equally. Therefore, the author argues, the opponents are

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mistaken.

[*Latin ed. p. 474*]

474 In RÃ¶this, the foundation of the union into one body was established by the decision of the Cardinals Medices and Salviati, and by the decree of Clement VIII. However, if only the matter of precedence is discussed there, it seems rather to indicate distinct bodies and the subordination of the chapter of St. Mary's to the Plebis. It cannot be objected, he says, that here a precedence arises which is common to all chapters, by reason of dignity or benefice, among the members of one body; indeed, if the words which are read there: "The canons of the cathedral shall reside and hold sessions from the side of the Gospel, while the archpriest and canons of the collegiate church shall reside from the side of the Epistle," did not demonstrate a precedence not among persons, but among bodies. However, the opinion of the opponents, who maintain that the union was equally principal and was brought about through confusion, so that indeed the church of St. Peter remained as the cathedral, but that both chapters were granted the rights of a cathedral, lacks the weight of legal principles. Moreover, he continues, it cannot be said that an equally principal union and a union into one body can be made according to circumstances: for if there were as many kinds of unions as there are circumstances, nothing ever could be defined by law, as Pitonius observes in *Discip. eccl.* 9, n. 40 – there – "In our law, only one kind of equally principal union has been added, namely, when a union is made only with regard to the Prelate, and not with regard to the churches themselves, nor their rights and privileges, as not only the *Glossa* teaches, etc., but also all canonists commonly." But even if this mixed union, equally principal and into one body, can sometimes be made through distinction and confusion, it does not follow that it has been made. He observes that, from the law itself and from obvious reasons, a mixed union is excluded whenever in the letters of union it is prescribed that the rights of each college shall remain intact, and that these rights are not to be violated, as he begins to demonstrate, citing the authority of Pitonius, *cit.* *Discip.* 9, n. 4, who refers to Cardinal De Luca in *Miscellan., Pacian., Castropal.*, etc. Indeed, if the text of the union of Bishop William is considered,

[*Latin ed. p. 475*]

ARETINA 475 states that it appeared in such a way that any confusion among the bodies would be removed. And the opponents, who in the civil court of appeal invoked Pitonium, are considered to have argued insidiously, or at least erroneously, since the aforementioned author entirely disagrees with the place cited by them. Furthermore, he believes that the very cause of the union, which is the mind and soul of the entire disposition of the opponents, is intended to resist. For, according to the patron,

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it cannot be presumed that the Bishop intended to inflict prejudice upon the dignity and, especially, the rights of his church, shortly after the decree of Innocent III against the opponents, which stated: "The cathedral of St. Peter, and all its canons, are perpetually subject to it." Indeed, he observes that the Bishop made the union with the intention of assisting the cathedral church. Moreover, the canons of the cathedral of St. Peter did not hesitate to fulfill the legal requirements regarding their consent, and both the decree of the union and the letter of Innocent IV clearly attest to this. Therefore, the patron argues, either it must be presumed that the canons of the cathedral, who, while acquiring nothing, were granting all their rights to the plebeian chapter, were suffering from madness, or the confusion must be completely removed into one body. For communication cannot be given between the superior and the inferior, and if a confusion into one is made, a diminution will be had on the part of the head, and an increase on the part of the inferior, with a greater diminution. Therefore, he concludes that all the rights of the cathedral which were in the church of St. Peter were neither taken away nor diminished by the union: and that those rights which were not previously there, did not come to be. Furthermore, with regard to the specific case of the union of a collegiate church with a cathedral, he notes that a change of status must occur, either before or during the act of the union, in one or the other. Therefore, he says, in the union between a collegiate church and a cathedral, if the erection of the collegiate church precedes the union with the cathedral, then both would equally possess the rights of the cathedral; if neither precedes, nor is it clearly defined in the very act itself, then it will be permanently removed from these rights. Regarding the matter, in Panormitanus, in chapter "Nolite Sede Vae," number 6: "If a church is united to a cathedral church, unless expressly..."

[*Latin ed. p. 476*]

476. ARETINA is raised to the status of a cathedral, but that lower church remains in its previous state, and the seat [of the bishop] is located there only temporarily. "Indeed," says Piton, in *cit.*, discourse 9, no. 42. However, the advocate adds, there is nothing in the documents of the union that even remotely touches upon the erection of a parish church into a cathedral. He further adds that the Bishop could not have brought about this erection, since it is established, according to the Rota in decree 784, chapter Molines, no. 1: "The erection of cathedral churches is reserved to the Blessed Peter and his successors, the Popes." See De Luca, *De praeemin.*, discourse 7, no. 45; Barbosa, *Iur. eccl.*, book 1, chapter 2, On the Power and Authority of the Supreme Pontiff, no. 137; Bouix, *De Capitulis*, page 189, etc. It is wrongly objected that five months after the Bishop's decree, the Apostolic Letters of Innocent IV arrived, by which the Pope ratified the union, and therefore, whatever had been done contrary to the law was corrected. For since the following words are found there: "What the aforementioned

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elected one has provided, we consider to be valid and pleasing in this matter, and we confirm it with apostolic authority," it follows that, beyond what had been done, that is, the decree of union, the Apostolic Letters could not extend. Since there is no mention of the erection of a collegiate church into a cathedral, nothing could be invoked regarding this matter. Furthermore, the advocate argues that the status of cathedral pertains to the chapter of St. Peter, considering also the perpetual custom of centuries. To this, he adds numerous testimonies taken from authentic documents, in which the church of St. Peter, now a cathedral, is called the greater church, and the diocese of Arezzo, now the head and mother of other churches in the city and diocese of Arezzo, while the church of St. Mary is usually designated only as collegiate or as a parish church. Since, according to the advocate, such distinct designations have been used up to this time in private and public acts, and especially by the Bishops and by the Roman Pontiff in their letters, it is clear that the chapter of St. Peter is seen and watched over by those who oppose it.

[*Latin ed. p. 477*]

ARETINA, having been for six hundred years in the condition of primacy and cathedral status, could certainly not fail to be strengthened by it, and to be confirmed by the custom of centuries. Concerning this matter, the Rota, in decree 849, case Molines, number 29, states: "Therefore, from this diverse designation of the canons, it is clear that there was a complete separation between them, and since the title of the cathedral chapter is almost always found to be given to the canons of St. Justin, and not to those of St. Antoninus, it must be said that the cathedral status was entirely transferred to the former, as related by Francis De eccl. cath., chapter 8, number 176. All the more so, because the church of St. Antoninus is mentioned in the aforementioned historical account among other collegiate churches, and it has always been named with that collegiate designation, which excludes the possibility of it being a cathedral: Rota, case Cerro, decree 587, number 5, and decree 56, number 33, paragraph 19, record." All of this, moreover, is further strengthened by the monuments from which the Pleban Chapter borrows, namely, the "praesidium" of Somãa. Indeed, whether in the decree of union, or in the opinion of the Cardinals Medices and Salviati, and even in the very letters of Clement VIII, both churches and chapters are alternately mentioned, namely, those of St. Peter and St. Mary, but also the cathedral and collegiate ones. But, not to the height of evidence, the confession of the canons of the Pleban is lacking, which testifies to the patron. For it is recorded that, in the year 1671, after the decisions of the Rota, they recognized the private cathedral status of the church of St. Peter, in the "transaction 'between the most illustrious and reverend canons and the chapter of the cathedral church, and the most illustrious and reverend canons of the Pleban church of the city of Aretia.'" And later, again, in

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the chapter meeting of September 17, 1750, when they promised to end the disputes and questions. The patron endeavors to demonstrate in the fourth part of his argument that the decisions of the Rota either do not pertain to the universal right of cathedral status, or that they have been annulled by subsequent definitions of the Holy See. And first of all, he believes that they do not constitute an exception to matters that have been judged. Indeed, as Paul and Ulpian state (Digest, 12, title 13, sections 14 and following), concerning exceptions to matters that have been judged.

[*Latin ed. p. 478*]

478 ARETINA: In order that this exception may be valid, it must, above all, pertain to the very same cause. Indeed, it is recalled that in the appellate judgment, two points were disputed: first, whether the union was valid or not, and whether it benefited the Chapter of the Plebis; second, in what respects it benefited. Thus, in the initial decision of June 2, 1645, Ghislerio stated: "Since an appeal has been interposed and the cause has been assigned to me, on May 18, 1642, I proposed the following question: Whether the aforementioned union benefits the Chapter of St. Mary of the Plebis, and in what respects." He recounts that it was decided that the union did not benefit the Chapter of St. Mary of the Plebis in all matters pertaining to cathedral rights, but only in certain specific cases expressly mentioned. The advocate argues that the initial decision admitted more of these kinds of cases, as is evident from the decision of June 2, 1645; but later, on March 8, 1652, out of the ten cases initially admitted, all except five were rejected. In the second decision, "the election of a sub-collector of spoils, the revision of accounts to be made to the same sub-collector... the deputation or universal election of canons by the bishop for the visitation of the diocese and of pious places, for the examination and ordination of candidates, and for the approval of benefices" were not assigned to the Chapter of the Plebis. But in the cause which is now before the Sacred Congregation, it is affirmed that the cathedral chapter never contested the union, nor, indeed, that it disputed not only some, but the entire right of the cathedral. Therefore, according to the advocate, if the cause is not the very same, the exception derived from the appellate decisions is invalid. However, he observes that, whatever may be the limits of the former judgment, in the appellate decisions, words sometimes occur which refer to the full right of the cathedral and the joining together of churches into one body. Nevertheless, he asserts that, in the Sacred Audience for preventing damages, which might arise from inadvertent observations in the decisions, the customary distinction has always been made between those things which concern the substance of the cause, and those which, incidentally, go beyond the limits of the

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judgment, so that only the former should be considered.

[*Latin ed. p. 479*]

ARETINA 479: The decision is to be ascribed to the writer, not by the vote of the judges. Rotam Fanen. Restii, in its entirety, March 4, 1853, cor. de Witten §. 11. Decision 299, cor. Seraphino §. ult., and Decision 498, n. 9, cor. Dunozett. From this, it concludes: either someone has added words to the decision contrary to the intention of the judges, and has exceeded the bounds of their authority; or, they did not wish to harm the office, and the words should be understood according to their meaning. The speaker considers these points to be stated almost for the sake of emphasis, since, after the decrees of the Sacred Congregation of Rites, which are placed before the Brief of Benedict XIV, the entire force of the former seems to have been lost. Indeed, His Eminence and Reverend Fathers have shown that the Apostolic Brief of the year 1746, together with the aforementioned decrees, which the advocate mentions as having all been issued, were intended to restrain the intemperance of the adversaries, who had even deceived the Sacred Congregation itself, and to eliminate the monster of concathedrality, from which so many controversies had arisen. The advocate argues that these documents concern the entire matter of cathedral law, and he seeks to deduce this either from the petitions of the Chapter, or from the words used by the Sacred Congregation. Furthermore, it is observed that an objection is raised against the Apostolic Letters, alleging a flaw of prevarication, as if they were produced after only hearing one side. For, the Apostolic Nuncio in Etruria, on July 13, 1743, as is noted in the factual account, wrote to the Bishop, ordering him « to communicate this news to both Chapters, so that each of them, for its part, may send me, in a non-judicial manner, a summary of its reasons. » Moreover, the following year, Flavius Chisius addressed a warning to the adversaries: « We order, by these present, that within fifteen days from the execution of these, they appear in Rome in a legitimate court before Us, etc. » To this is added the fact that a clause was added to the Brief, « sublata » and annulling the decree, with the statement that, unless with the permission of the Pontiff, it is not permissible for the adversaries to bring this into consideration. Furthermore, it is also considered to be wrongly opposed that Benedict XIV, in subsequent letters or actions, has disapproved of what he had previously decreed concerning the universal law of cathedrality.

[*Latin ed. p. 480*]

480. The granting of honorary titles, indeed, can furnish no valid argument. Moreover, in the very documents granting the concession, as mentioned above, a clear distinction is made between a cathedral and a collegiate church, and the canons themselves declared shortly thereafter, "that in the declaration of the brief issued for this indult, they have nothing to

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object to... but are content with what they presently have and possess." Nor would it be valid, if we were to hear that the patron claims that the church of St. Mary of the Parish is not, in fact, a cathedral, yet possesses all the rights pertaining to a cathedral. Indeed, as can be gathered from the documents of the parties involved, and from the very nature of the matter, the chapter of St. Mary's Parish claims the rights of a cathedral chapter, which it could not possess unless it were a cathedral or a co-cathedral. Furthermore, the equality between the two chapters is excluded by the very decree of union, in which the canons of the parish are joined to the Provost of Arezzo, and are to render obedience and reverence to him, and to perform the duties due to him with devotion... so that there may be one head in the church." Moreover, it is permitted to the canons of the cathedral to "reside within the said parish whenever and as it pleases them, and as they deem expedient," which is not granted to the opposing party. Furthermore, in the Constitution of Clement VIII, a primacy of the cathedral chapter is mandated in the proceedings; and this primacy is abundantly evident in other visits by the Bishops, and also in a certain agreement regarding the collection of revenues by the Prelate Salviati. Among these, it is particularly worth mentioning the Apostolic Letters of Alexander VI, in which different vestments were granted to the Provost and canons of the cathedral church, distinct from those used by the canons of the parish, so that a distinction might exist between the greater church and the lesser. Finally, anticipating an objection that might be raised after these arguments regarding the uselessness of the union, the patron defends the chapter of the church of St. Mary of the Parish, asserting that it is equal to another cathedral chapter.

[*Latin ed. p. 481*]

The Arezzo diocese was, in its principal aspect, united, and the effect of this union was that the two united bodies remained distinct in all respects as before, but were subject to a single head, as taught by De Luca in *De praeem. disc.* 29, no. 29, and in *De parochis disc.* 35, no. 5; by Barbosa in *Iur. Eccl. Univ.*, book 3, chapter 16, no. 21; and by Francés in *De eccl. Cath.*, chapter 6, no. 134. However, the precise intention of Bishop William is revealed by the fact that he ordered the chapter of the cathedral to be subject to the prelate. Furthermore, according to the decree of the Holy Roman Church, the union also extends to the communion of honors whenever they act together, but not in those matters that pertain to the private cathedral status, or to the jurisdiction of the cathedral chapter. In particular, with regard to the election of a capitular vicar when the see is vacant, which the chapter still claims to have the right to hold, it should be noted that this involves an act of jurisdiction that cannot be exercised without cathedral status, as demonstrated by the authority of Cardinal De Luca in *Adnot. ad S. C. T.*, discourse 31, no. 1 and following, and by Leuren in *Foro Benef.*, volume 3, treatise on cathedral chapters, section 1, question 455. Moreover,

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it is consistently reported that, when the see of Arezzo was vacant, the jurisdiction was always exercised in the name of the cathedral chapter, as countless documents and even the seals used by the Curia and the capitular vicar demonstrate without exception. However, it is observed that, since the will cannot be known, and even less those things that cannot be expressed, it cannot be maintained that Bishop William implicitly granted the chapter a right that did not exist before the Council of Trent. Indeed, according to ancient law, after the death of the bishop, the jurisdiction was exercised jointly by the canons, and, more specifically, ancient documents show that "when the Bishop of Arezzo dies, the vicars remain in charge of spiritual matters, the archdeacon, and the primicerius." Furthermore, it is said that the chapter of Saint Mary's could not have conferred upon the chapter a part of its jurisdiction, of which neither the opinion of Cardinals Medici nor that of Salviati speaks, because Saint Auditorium could only, and said, expend, in those matters in which the union of the suffragan extends. Furthermore, the advocate points out the Brief of Benedict XIV, unless the Acts, Volume XXIV, page 284, 31.

[*Latin ed. p. 482*]

482. We certainly do not wish to state that anything was decided [by the Arezzo court], since it denied the cathedral status of the chapter of Saint Mary of the Parish, and it prevented the canons of that same church from being restored to their rights and to their proper order, following the election of a capitular vicar. Furthermore, the opposing party cannot appeal to prescription, as the orator argues. For, as numerous documents abundantly demonstrate, at the time that elapsed between Trent and the royal decrees, the canons of Saint Mary of the Parish rarely, and not without contention, participated in the election of the capitular vicar. Moreover, the observance of the law after the Apostolic Letters of Benedict XIV cannot be invoked in vain, because it is clear that they were unjustly denied approval by the civil government of Tuscany; and since, therefore, they cannot act against those who are not bound by them, it would not be permissible to draw any argument from this. *De Angelis, Praelect. Iur. Can.,* lib. 2, tit. 6. Furthermore, it is commonly held, as stated by Riganti in *reg. 4, Cane. Ap.,* § 6, n. 52 and following, that Papal Letters with a repealed clause and a nullifying decree cannot be violated by any prescription, however long. Finally, in practice, since in our time the laws of Riez require a royal decree even for capitular vicars, the orator fears that, in the case where the election is held jointly, it may be denied execution, as they say, in order to prevent an election that would infringe upon a civil judgment. And since, the patron argues, the parish chapter, lacking jurisdiction, cannot participate in the election of the capitular vicar, it must also be held that the same applies to the related matters, namely, the reception of the new Bishop and the transfer of possession to him. Furthermore, the discussion regarding the

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division of spoils, after a transaction has already been initiated between the two chapters, is considered to be unnecessary. With these points presented on both sides, the intention is to clarify the question of whether it is established that the Church of Saint Peter in the city of Arezzo lacks private cathedral status, so that only its chapter is entitled to it.

[*Latin ed. p. 483*]

ARETINA 483: All rights, privileges, and honors pertaining to the cathedral; or rather, the Chapter of Saint Mary of the Parish shall be so equally and principally united, that the aforementioned rights, privileges, and honors shall be ascribed to both cumulatively. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on January 23, 1892, decided to respond: It is not established that the Church of Saint Mary of the Parish possesses the status of a cathedral; but it is established that the Chapter of the same Church is united to the Chapter of the Cathedral of Arezina, according to the form of the judgment rendered in full: and furthermore. FROM WHICH THESE CONCLUSIONS ARE DRAWN. I. The Chapter of Saint Mary of the Parish lacks the honor of cathedral status; but it enjoys, as one body and one chapter, the honors, privileges, and rights pertaining to the Cathedral Chapter. II. And therefore, both chapters indiscriminately have the right to elect a capitular vicar in the vacancy of the See, to receive the new bishop, and to deliver to him possession, to receive and participate in the spoils of the deceased bishop.

ENGOLISME. MARRIAGE. On December 12, 1891. Session 24, chapter 1, concerning the reform of marriage. SUMMARY OF THE FACTS. On July 6, 1865, in the Church of Saint Leodegarius in the city of Compiniac, in the diocese of Angoulême, according to the rites of the Holy Mother Church, the marriage was lawfully and validly contracted between Mr. John Oscar du Vignaud and Miss Sophia Magdalena Lecoq de Boisbaudran, through the exchange of vows. However, barely twenty days after the celebration of the marriage, the wife abandoned the marital home, and, after being implored once, twice, and a third time by the civil tribunal to refrain from doing so, a decree of separation was issued; until, after several years, at the request of the husband, a civil divorce was pronounced.

[*Latin ed. p. 484*]

484 ANGUOULÊME. The entirely rejected reconventional action of the woman was dismissed, and the expenses were awarded against her. After these events, the man, having repeated his petition, instituted a suit before the ecclesiastical court of Angoulême, requesting a dispensation from the Supreme Pontiff concerning a marriage that was valid but not consummated. The ecclesiastical court, in turn, forwarded the petition to the Sacred Congregation of the Council, which, after a hearing before the Holy Father on March 28, 1887, instructed the same court to conduct a process,

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up to a definitive judgment, concerning the lack of consummation and the reasons for granting a dispensation, observing the essential principles of the Benedictine Rule, "Dei miseratione," the Instruction of the Sacred Congregation of the Council, and with the power to: 1° delegate the task, if necessary; 2° to grant a dispensation, if the circumstances warranted it, regarding the examination of the woman's body; and 3° to compel, if necessity demanded, the presentation of testimonies produced in the civil proceedings.

SYNOPTIC DISCUSSION. The consultant said, "I must inquire whether the two matters that must be established by law remain proven, namely, that the marriage was truly not consummated, and that there are very serious reasons for granting a dispensation. In this inquiry, since the entire question revolves around the facts, I will note only one thing from the law, namely, that the lack of consummation of the marriage is sufficiently established whenever the oath of the parties, unanimous testimonies regarding both the fact itself and the veracity of the parties, and finally, serious evidence derived, so to speak, from the very circumstances, all concur to demonstrate it. This is so clear, and the other matters would be so superfluous, that I would certainly bore you if I were to attempt to prove them and explain them even briefly. Therefore, with regard to the facts, the marriage was not consummated, as the plaintiff himself states in his pleadings. Although they admit that they intended to perform the marital duties on several occasions, and although they do not doubt that they proceeded to the point of the man touching the woman's genitals; nevertheless, under oath, they affirm with all certainty that there was no marital congress."

THEOLOGIAN'S OPINION.

[*Latin ed. p. 485*]

ENGOLISMÉN. 48ö I have never had occasion to be present, and this because the husband always and stubbornly resisted the wife's solicitations. However, as the process records will show to the reader, the husband explained all these things with words that entirely bear the marks of truth, and most clearly exclude any possibility of doubt. And rightly so; for all the witnesses whom they call give the fullest testimony to the husband's veracity; so that not one has been found who would even consider putting it in doubt. And it should be noted that among the witnesses, two parish priests are found, namely, the Archpriest of Berbecilla, and the Curate of Castelnuovo, who, not only testified to the husband's veracity, but also to the veracity of other witnesses, stating that all were commendable, and that some among them shone with a special piety and devotion. And it would be insufficient for the witnesses of the plaintiff to affirm the husband's veracity under oath, if they did not also testify to the fact of the

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consummation itself. But the contrary happened; for all the witnesses on the husband's side, with one voice, affirm that the marriage was not consummated, stating that they learned this either from the husband himself, at a time not to be suspected, namely, before and immediately after the separation of the spouses; or from a woman of worthy faith, who at that time resided as a servant in the home of the spouses themselves; or finally, from public reputation, since the fact was well known, even with regard to special circumstances; so that it aroused the admiration of upright men, as happened with the Archpriest of Berbecilla, who found that the fact and the circumstances were known by all from the very first time he entered his parish. Therefore, with what right can one doubt the fact of the consummation not having taken place, when it is confessed, under the sanction of an oath, by an honest man, and testified to by witnesses without exception? And if one could doubt, there are already so many and such supports available, which would suffice by themselves to prove the truth of the fact, indeed, they would be more than sufficient. Let us follow the spouses, as they, coming out of the Church, immediately after the celebrated mar-

[*Latin ed. p. 486*]

486. ENGOLISMS. They return home, to their own dwelling, to feast with their parents and friends. I know not by what fate, a woman heard that her husband refused to receive into their conjugal home a certain young woman, whom he himself loved with the greatest affection. Hearing this, her anger flared up, she approached her husband, and, speaking more with fury than with words, she threatened that, unless he received the girl into the house, she would petition for separation within eight days. The husband refused, and rightly so, lest he endanger the sanctity of the marriage. But alas, poor man! He found the origin of discord where he had hoped to find peace. Therefore, it is not surprising that on the first night of their marriage, when the husband made his due request, he was not met with embraces, but with bites, and the indignant woman so resisted his advances that she forced him to leave the bridal chamber and spend the night on a separate bed, a truly inhuman act. This fact was testified to by others who remained in the conjugal home, and, so to speak, was witnessed by them, for they saw with their own eyes the scars of the bites. And indeed, for twenty days, the spouses remained together in this manner. During that time, there was such a lack of harmony between them between them that the woman even attempted to leave the house through the window. And that was not enough; after the separation, the woman returned to her husband's house three times, not for any other reason than to cleverly force the husband to do things that she could then use as evidence before lay judges to obtain a decree of separation. From this, we learn that the woman insulted her husband, that the husband struck the woman, and that their minds were sometimes so disturbed that they even forced the

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presence of city soldiers, who considered it necessary to expel the woman from the house. Do we then imagine that such spouses would ever agree with each other? But why do I recount such things, when the very woman, although unwilling, provides the most evident arguments that the marriage was not consummated? It is known that the woman once went to the Most Reverend Bishop to request the dissolution of her marriage, asserting and affirming that, although the marriage was valid, it had never been consummated with her husband. And if, later, she changed her mind, and not only did she abandon her request for dissolution, but she became even more defiant, when, upon being urged by...

[*Latin ed. p. 487*]

ENGOLISMEN. 487 To a man, she would have been called a judge; she did this solely so that, by calling the man "sir," she would not benefit her adversary. But alas! This imprudent woman! And in what way could you have helped your husband, if you had certainly known, and could have proven with arguments, that the marriage had truly been consummated? Does not your own mouth judge you, when you utter such improper things? There is another reason to be investigated for the woman's obstinacy. For the clever woman knew that certain things were present, which, if they had been presented to her, should have caused her to yield. For when the man, in the civil tribunal, in her presence, asserted that the consummation had not taken place, was it not the woman herself, who, by her silence, confirmed the matter, and to whom the law should have denied everything? But I regret having said that the woman confirmed the matter by her silence: she should have spoken with the most open words. For in the very document which she submitted to the civil tribunal, she not only presumed that the marriage had not truly been consummated, but, attributing the reason for this to the man himself, she undertook to prove that she had not been willing to satisfy his requests, because he was asking for abominable things. But is not the one who explains the reason for the matter considered to be confirming the matter itself? Let us suppose that the woman did not satisfy him, because the man was asking for something unjust. But what about the reason, when the question only concerns the fact, and the fact is presumed by law when the parties dispute about its cause? Whether, therefore, the man asked for something lawful or something abominable, it remains proven that the woman did not want to satisfy him. How, then, was the marriage consummated if she never satisfied him? Moreover, when the woman recounted the whole matter in a certain letter, which she sent to her mother-in-law, after having recounted the words with which the man, in the civil tribunal, asserted that the consummation had not taken place, she left the matter suspended, neither denying the fact nor adducing the reason for it, although she should have done both, because she was writing the letter to defend herself. I know indeed that this letter was not

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acknowledged by the woman; for she did not appear in court. But if the woman did not acknowledge it, she admitted...

[*Latin ed. p. 488*]

488. ENGOLISMEN. However, even the Defender of the Bond, who, having considered the woman's testimony, permitted the letter to be included in the proceedings, allows that there are direct proofs from the husband's oath and the testimonies of witnesses, and that it is clearly established that the husband and other witnesses are truthful; and finally, in confirmation of these proofs, there are very serious circumstances arising from the woman's own actions, which have estranged the husband from the very moment of the first marriage, which have placed every effort into seizing an opportunity to break away from the marriage, which have repeatedly admitted and acknowledged, with most evident arguments, the lack of consummation. Therefore, I say, when all these things are present, it will be easy to conclude that, with regard to the fact in question, it is sufficiently established that there was no consummation. It is not unknown to me, Most Eminent Fathers, that the Defender of the Bond could present more and graver arguments to the contrary, which, if left unaddressed, could do no small harm to the plaintiff's cause. Therefore, it will be worthwhile to at least examine these, so that the truth may shine forth with a clearer light. And so, the main argument that could be presented in favor of the woman is derived from the testimony of Madame Lydia Péronneau, who claimed to have witnessed the consummation of the act, when she asserted that, a few days after the celebration of the marriage, she heard the woman say that she was perhaps pregnant, and that she had learned this even from the mother and aunt, who considered the matter to be certain. But how much weight should be given to these subsequent actions, will be demonstrated. And you know, Most Wise Judges, that this Lydia Péronneau is the very young woman who was a cause of evil from the very first day of the marriage, when the husband refused to have relations with his wife, who wanted to keep her with him in the marital home. What then is surprising if such a witness testifies against the husband in favor of the woman? And what credit should be given to this same witness, is shown by the Archpriest of Compiègne, who, when legally questioned, responded that he considered Lydia to be, if not a liar, at least suspicious.

[*Latin ed. p. 489*]

ENGOLISMEN. 481) Praecipue in praesenti causa, in qua absolute sine ullo partium studio esse non posse dixit. Et quid si, cum aliquibus testibus, relationes inter Lydiam et mulierem haud honestas fuisse • supponamus? Et revera quod in casu Lydia fidem nullam mereatur, inde patet quod eius depositio saltem ut contradictoria habenda sit. Nam initio asserit se nihil scire quoad factum consummationis; licet sciat coniuges etiam in itinere

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eodem lecto usos esse. Deinde adiungit mulierem sibi dixisse quod forsan in utero gestaret; imo idem se audivisse fatetur a matre et ab amita. Tandem omnium immemor concludit afferens verba, quae prolata dicit a suo con sobrino medico, Edoardo Gay, ex quibus resultaret consummationem impossibilem fuisse, forsan ex impotentia viri. At, quaeso, quomodo ei credendum, quae de iisdem loquens coniugibus, virum impotentem supponit, feminam in utero gestare dicit, et utrum inter se convenerint se ignorasse fatetur? Voluitne de crimine accusare mulierem? Sed tunc matrimonium cum viro suo haud consummatum fuisse patebit. Et si crimen exclusit, quomodo conciliari poterunt impotentia viri, gestatio mulieris, et ignorantia sequutae consummationis? Sed haec omnia explicantur, si Lydiam in hisce omnibus asserendis mendacem fuisse probetur. Atque ita esse acta processus conclamant. Nam interrogatus Edoardus Gay an revera protulerit verba illa, quae fuerunt a Lydia enarrata, nedum negavit se verba illa protulisse, sed insuper adiunxit, se neque mulierem vidisse, ideoque neque fundamentum habuisse potuisse ad illa verba proferenda. Pariter si consulamus depositiones Lydiae Matris, videbimus, illam nullimode proferre potuisse verba, quae eius nomine a Lydia relata fuerunt. Dum enim asserit Lydia matrem suam admisisse factum sequutae consummationis; Mater e contra iuridice interrogata respondit, se nihil vidisse et nihil audivisse, ex quo resultaret mulierem vel praegnantem, vel virginem fuisse. Ut itaque ad conclusionem de veniamus, illius certe testi-

[*Latin ed. p. 490*]

490. ENGOLISMENTS. This practice is entirely to be rejected, as it is established that: 1° it involves being a party in a cause against one side or the other; 2° it at least presents a doubtful truth; 3° it has given contradictory testimony; indeed, 4° it has been false. But in our case, it is established that: 1° Lydia is a party in a cause against the man; 2° she, according to the testimony of her own parish priest, does not, at least in the present cause, deserve any credit; 3° her testimonies are contradictory to each other; indeed, 4° they are entirely and completely contrary to the truth. Therefore, Lydia's testimony, with regard to the present cause, is entirely invalid and null, and should be rejected by all.

Indeed, the Defender of the Bond could retort the argument, or at least argue *ad hominem*, asserting the same about a certain deposition made by the man, which was neither legally proven nor recognized. For the man had said that he had been told by the Lord Advocate Roy de Biotte that the woman had feared showing her Advocate, Lord Peyrecare, the medical document of her virginity, which, however, was rejected by the Advocate, because it was contrary to the argument of his client. Since this arose from the records of the process, the ecclesiastical tribunal, at the request of the Defender of the Bond, ordered that these two Advocates be heard in order to obtain confirmation of the facts, which, however, was not obtained.

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But I am astonished that the ecclesiastical tribunal could summon them to testify, who, by the law of their office, were bound by secrecy, when one of them had spoken in the cause for the woman, and the other for the man, before the civil tribunal. Hence, when legally questioned, each replied that they knew absolutely nothing about the things that should remain hidden from their own client. Indeed, 1° the woman's advocate expressly denied having seen the medical document of her virginity; 2° both advocates equally denied knowing the name of the doctor who was said to have issued such a document; but, I ask you, what else could they have answered? Would not a hesitant answer have provided a basis for supposing the existence of the document? And indeed, most wise Judges, with regard to the name of the doctor, which advocate...

[*Latin ed. p. 491*]

ENGOLISMEN. 491 He ought to have declared that he did not know; but note the difference in the response when the matter concerned a document attesting to the woman's virginity: for while the woman's advocate denied that he had seen it, on the contrary, the man's advocate merely confessed that he did not remember it. And both responded correctly, for, in order to protect the law of secrecy, it was sufficient for the man's advocate to deny the matter, without, however, destroying the possibility of the thing; on the contrary, the woman's advocate had to deny both the matter and the possibility of the matter. Now, since these things are so, it is most clearly evident that nothing at all can be concluded either against the man or against the woman; for the negative responses, considering the particular circumstances, provide only a negative argument, which in this case has no force whatsoever to establish the entire truth. Therefore, only the testimony of Lydia's mother remains to be heard, of whose veracity the Archpriest of Compiniacus gave the fullest testimony, and whom we have already observed to have been induced by Lydia herself to favor the woman. If, therefore, any argument could be adduced in favor of the woman, it certainly would be drawn from the depositions of this witness, which no one will deny to be of the greatest importance. But this witness is that very one whom we heard to have denied, as mentioned above, what Lydia had recounted in her name. And what does this witness add to her depositions? She adds, from her own knowledge, that the spouses were not attached to each other by any bond of love; she adds, from the account of others, that the woman refused to lie with the man, so that she seemed to avoid it as if it were a brothel. But what do these things prove, if not that Lydia was lying when she brought in such a witness in favor of the woman? Do they not openly confirm all that the man and his witnesses have recounted, under the sanctity of an oath? Let us add that Lydia's mother states that she heard from the woman that in Bordeaux she had been rejected by the man, and had been forced to spend the night in a carriage, although we know that

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the very opposite had occurred. But what is surprising if the woman was able to recount a falsehood to Lydia's mother, in order to defend herself against the man?

[*Latin ed. p. 492*]

492. Whether a man or woman, or a woman a man, has rejected the other, it remains certainly proven that they did not agree; which was, indeed, what was to be demonstrated. Whether, therefore, those things are considered which are presented in the records for the man, or those which are presented for the woman are examined, the fact of the lack of consummation must be entirely and certainly retained; 1. because the man and the witnesses induced by him affirmed this by oath, concerning whose veracity there can be no doubt; 2. because this is confirmed by grave testimonies, originating from the very act of the woman; 3. because Lydia's deposition is entirely to be rejected, since it is contradictory and false; 4. because the testimony of the advocates, presented, does not demonstrate anything contrary; 5. finally, because the single witness from the woman's side harms the woman herself and confirms the testimonies of the man. But is there anything concerning the causes for a dispensation? You know well, wise judges, that aversion of souls and hatred occupy the foremost place among the causes for a dispensation; so that whenever these are verified, the apostolic benevolence of the Supreme Pontiff often finds a substantial remedy in the very dispensation of marriage. But this aversion of souls, this detestable hatred, is so clearly and manifestly verified between the spouses about whom we are speaking, that it is not permissible to doubt it. "May it be far from me," says the man, "to return to harmony with my wife; for the minds of these two were so averse to each other that reconciliation appeared impossible," as was stated to Lady Ludovica Drilhon, and this was due to the woman's evil will, as asserted by Lord Anatolius de Fradin, or due to the complexity of circumstances, as taught by Lord Leopold Vacquier. Furthermore, the woman's obstinacy, her will not to go to the ecclesiastical judge so that she would not betray her adversary or her husband, the effort made in vain by the civil judge to reconcile the parties, as the woman herself narrates in a letter to her father-in-law, sufficiently and abundantly demonstrate that it is utterly impossible to induce the spouses to restore their conjugal life. Therefore, since it is sufficiently established, both concerning the lack of consummation of the marriage, and concerning the causes for a dispensation, I would answer the question posed at the end in the affirmative, said the consultant.

[*Latin ed. p. 493*]

ENGOLISHMENTS. 493. THE OPINION OF A CANONIST. The Consultant said that two things must be investigated: namely, whether the marriage has been consummated, and whether there are reasons for a dispensa-

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tion from a valid marriage. From the present testimony of Monsieur Oscar de Vignaud, it is certain that the spouses have not achieved the effect of consummation: for scarcely had they entered the conjugal chamber when they began to quarrel, and a most vehement discord arose between them. The reason for this disagreement is attributed, not to the same cause, but to different ones, both on the part of the husband and the wife. Indeed, Monsieur de Vignaud recounted that, on the very evening of the wedding, as he was ascending to the bridal chamber, the bride rushed at him and bit his shoulder with her teeth; and therefore, he was forced to spend the night in a chair in the bedroom, rather than in the bed; while, meanwhile, Sophia threatened to throw herself out the window. The wife, on the other hand, having brought a lawsuit against her husband in the secular courts, ordered her lawyer to state that, on the very first night of the marriage, she had felt herself deceived in her desires and affections. She had suffered an outrage to her own bridal dignity; she had been treated like a common girl by her monstrous husband: to which she desperately resisted, and, by struggling, sought to repel the infamous and unrestrained violence with which he attempted to satisfy his evil desires. In this unequal struggle, Monsieur de Vignaud, it is said, was twisting the bride's hands, and pressing his shoulder against her mouth to silence her. Seeing no other means of freeing herself from him, she bit him with her teeth. We inquire whether, with such dispositions of mind and such adverse effects, it can be said, or whether it is permissible to suspect, that such spouses have nevertheless achieved the end of marriage, and the union of bodies. It cannot be denied that the husband repeatedly attempted to entice his wife to conjugal intercourse; and, as another witness affirms, he did so because he was interested in having a child: since he would have a share in the Lecoq family inheritance through the propagation of offspring. And it is certain that Oscar made such an effort, from many statements that exist.

[*Latin ed. p. 494*]

494. ENGOLISMEN. In the course of the proceedings, particularly from her own declarations before a lay judge, with the aforementioned Sophia present; and also from documents filed with the ecclesiastical tribunals, it is evident that she had approached her husband in such a manner as to be able to fulfill the interior acts of marriage, were it not for her constant obstruction, preventing her from doing so. Meanwhile, Sophia had accused her husband of intending to commit shameful acts against her. It was then inquired whether she might perhaps be unaware of her husband's actions. However, beyond what has already been stated, due to the confession of her dearest friend, it became evident that she was not unaware. Therefore, we are taught to understand this repugnance, which her husband constantly laments; and it is an inexplicable contradiction. Let whatever may have been the first marital advances of the bridegroom pass, which

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she condemned as vile and abominable; but from what is written, it is clearly known that the bridegroom, at times, did seek honest marital acts, which she never conceded. It therefore appears that Sophia considered marital acts to be shameful and abominable. Therefore, the cause of the consummation not taking place in their marriage, the proximate and absolute cause, if the marriage truly remained unconsummated, is undoubtedly found to be the woman's negative will, and her contrary manner of acting. Invited by the lay judge to offer some explanation regarding this great and incomprehensible aversion of the woman, she stated that she was ill. Indeed, a declaration regarding such a so-called illness would have been very useful in completing the proceedings. Such a declaration might perhaps have revealed and resolved this paradoxical behavior of Sophia. Whether it concerned some bodily imperfection, with or without care, from which the young bride suffered, and which she concealed out of modesty; but later, in marital intimacies and acts of trust, did she reveal it to her husband? A city physician, called by the husband and with whom she spoke about her own disturbances, testified that he had considered So-

[*Latin ed. p. 495*]

ENGOLISMEN. 495: The woman appeared to be in good health; she had offended her husband by refusing to consummate the marriage, and had even threatened to throw herself out the window rather than submit to marital relations. Therefore, whether due to physical or moral impotence, this marriage remains unfulfilled and not fully consummated. This asserted fact, it appears, was established without any hesitation, based on expert medical examination, that is, a proper inspection of the woman's body, which revealed that she was still a virgin, and remained so even now. However, she declared that she would not submit to any actions that a secular court, as she reported, considered scandalous and reprehensible; and she was so averse to such actions that it was deemed more appropriate to seek a dispensation from the Supreme Pontiff, as is required in similar cases, regarding the need for proof of such an experiment. Therefore, other arguments must be considered in determining whether the marriage was consummated or if the woman's integrity remains intact. It is very difficult to understand how, after a grave and unfortunate first night of marriage, these spouses could have continued to live together, spending days together in the same room, and even sleeping in the same bed. Indeed, it is difficult to imagine how this could have happened, unless it is believed that their hearts had returned to each other, and that they had re-established a marital friendship. From whence, then, such confidence after such strong aversion? There is no report that the bride wished to separate, or that she refused to endure the man she had with her, who was so brutal and odious. If she remained with him, if she lived with him, if she followed him, she should have expected something from him, and, indeed,

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she should have hoped that he would restrain himself from the evil acts he committed against her. It is not conceivable in this situation that the husband would not restrain himself; rather, he would have preferred to obtain whatever is proper and honorable between spouses. He confesses that he repeatedly requested marital relations, and that he approached the bride with flattery, even bringing his own body close to hers. Certainly, after these events...

[*Latin ed. p. 496*]

496. ENGOLISMEN. It appears congruently and naturally that the marriage, of which we are speaking, has attained consummation. However, the husband wasted his efforts, and the marriage remained only valid. On the other hand, it is known that Lady Lecoq ordered that something be put aside, stating that if she had lived with her husband for so many days and had been with him, she did so with the hope that her husband might, perhaps, correct himself and become a human being. But, she says, things turned out differently; indeed, she had to experience daily the husband becoming worse and perverting the conditions of innocent friendship, since he was corrupted by bad habits. However, even if one could find some excuse from which Sophia acquiesced and adopted the manner of living with her husband, it is, indeed, demonstrated from her own confession, how hardened her spirit became after that unfortunate night and thereafter; and she became so resistant to her husband that even this confirms what Oscar asserts, that she never repaid him with marital favors, and constantly denied the duties of marriage. What do these words of the spouses mean, if not to have such explicit confessions? Indeed, if these are added to those that they have revealed concerning the origin of the discord, it seems that both are making an undeniable confession on this point. For they both admit that this discord began almost as soon as they ascended to the bridal chamber; and the bride adds that this truly happened because of the infamous acts of her husband against her. Therefore, if this attempt occurred at the very beginning and caused the discord, which was never resolved, then no prior act, even an honest one, can be presumed; and consequently, neither can the marital union. Therefore, from the conversation produced by them, the consummation of their marriage is rather excluded, and the lack of consummation is greatly confirmed. Nevertheless, the testimony of Lydia, which was presented in the process, favors the assertion of consummation, for she declared that, being intimate with Sophia, this one revealed to her that she was perhaps pregnant.

[*Latin ed. p. 497*]

ENGOLISMEN. 497 It is useful to know, briefly, that Lidia's deposition seems to be based on suspicion; and it appears more conjectural than truthful. She confidently reports to her mother, and, having been assured

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by repeated questioning, declares, under oath, that her daughter-in-law is incomprehensible; nevertheless, she insists that, due to the aforementioned aversion, the marriage of her son has remained unconsummated. She also reports to acquaintances and friends, as many as offer themselves, that, shortly after the first wedding night, everything occurred as described. And all these individuals, endowed with proven integrity, and all having previously sworn under oath, have confidently declared that the Marquis de Vignaud did not consummate the marriage; and they constantly add that this occurred due to an inexplicable reason concerning his wife, and due to her manner of acting. The same woman declared this to several parish priests; and she confessed to her own bishop; and now she has solemnly presented a written account to the Supreme Pontiff, affirming the unconsummation of her son's marriage; therefore, she says: she is invoking a pontifical dispensation, as an act of justice, or a judgment. Indeed, this language is excessive, but excusable in a layperson; nevertheless, it demonstrates that in him there is a perfect conviction and certain knowledge concerning the unconsummated act. It is important to consider how, due to the impediment of a valid marriage, Oscar would only feel the burden of conscience; while, meanwhile, for civil purposes, a secular judgment is available to him, which provides the possibility of proceeding with a divorce at his own discretion. Therefore, if he were to falsely assert something to the Pontiff, he would certainly not obtain the solution he desires; but rather, his conscience would be constrained by the title of deception and the use of an oath. This cannot be presumed, given the qualities of honesty and religion, which are commonly asserted by all virtuous men, and especially by those bound by the sacrament, who provide evidence based on experience. He refused to give the name of the Masonic sect. He boasts of being a Catholic; and he professes that he has never abandoned the virtue of filial piety. In light of the aforementioned declarations by the Marquis de Vignaud, which concern the intimate acts of marriage, the following is established.

[*Latin ed. p. 498*]

498. ENGOLISMEN. While, and with a most profound silence, the matter concerning the consummation of the marriage was kept secret by Sophia. She presented no documents whatsoever; and she spoke nothing, neither affirming nor denying; and no one spoke or contradicted concerning her right or her disdain, as if it had been either denied or affirmed by her. When bringing the case before the secular tribunals, she put forth several accusations against her husband; alleging that she was seeking vengeance for those things concerning which she was rebuked by the very Count himself. Among these accusations, she frequently repeated the claim that she had constantly opposed the marriage, so that it would not attain its natural purpose; and therefore, she was treated as if she

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had denied the marriage its due rights. And yet, it is astonishing that we never heard her respond to the accusations leveled against her, while she, in the meantime, was using inappropriate arguments to support her claims. Therefore, Sophia's silence, so long maintained and pursued with such diligence, leads the moral mind to the conviction that the marriage was truly not consummated, which she refused to affirm, and which she could not deny. However, she did confess that, if she were to submit, she would certainly give an argument in favor of her husband, which she refused to give; thus, she demonstrated in herself that her marriage had not been consummated. And thus, she makes up for the lacking evidence. Nevertheless, from what has been said, one might still find a way to argue that the explicit and absolute confession of the wife concerning the lack of consummation is lacking. And it is also true that such a word might be found among some canonists.

[*Latin ed. p. 499*]

ANGOULEME. Four hundred and ninety-nine [persons] strictly adhere to [ecclesiastical] observances; but this is not an impediment; for, when a deficiency is perceived, it can be otherwise remedied. The Bishop, when he presented the suppliant petition to the Supreme Pontiff, which the Count de Vignaud humbly requested, that he would deign to grant a dispensation concerning a marriage that was valid but not consummated, appended the following declaration, written by his own hand: "We have seen and heard the aforementioned wife; for, upon being summoned by civil authority, her anger flared, and she sought to inflict injury upon injury, and she desired to demand a dispensation concerning the marriage not consummated; then she abstained, first out of fear of incurring expenses, and especially out of hatred for her husband, as if she believed that he was already prepared to enter into other marriages, and that such a dispensation would greatly please him. She constantly affirms the lack of consummation of the marriage, and that quarrels arose on the very night of the wedding." Furthermore, the Vicar, when he forwarded the records of the process entrusted to him to the Sacred Congregation, added: "Moreover, it is my duty to state that, on previous occasions, when the aforementioned woman came to me and to the Reverend Bishop of Angouleme, she always asserted the lack of consummation of her marriage, without any hesitation. Indeed, she reported a fact alleged in the records of the process, for which we could not find proof; namely, an examination of her own body, previously performed by a certain physician, while she was living separately from her husband, and a written testimony of her virginity given by that physician." The reasons to be adduced for obtaining the dispensation are mutual hatred; the judgment of civil judges; and the impossibility of the parties reconciling in any way. The animosity that the spouses de Vignaud have demonstrated towards each other is of such a nature that there is no known means by

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which human efforts can extinguish it; but, in order to enjoy, each in their own way, the tranquility of life, they have induced this state in themselves, by force of law; properly separating from each other and legally pursuing actions concerning civil rights. As for the judgments, which are held as if obtained by secular...

[*Latin ed. p. 500*]

500. ENGLISHMEN. With authority, and by studying canonical rites, they attempt to impose things that are not of great importance; and all the more so because we see how far their opinions have diverged, now refuting, now admitting the same instituted questions, and by recalling their own minds regarding the condemnations imposed, and the subsequent absolutions. Concerning the harmony between these spouses, it is truly the case that the words of the Count de Vignaud were never present. From the very dawn of their marriage, such fierce anger arose that it never ceased; and they lost all peace, and even all hope. In vain did the bride's mother strive to rekindle love, and then her father; and even the civil judge attempted reconciliation; nor did the diocesan Bishop, and others, whom we pass over in abundance; but all in vain; so that all those who were asked from their number to act as mediators for the reconciliation of the spouses unanimously judged the matter to be impossible. Nor did the granting of a dispensation avail, nor the delayed petition, as has been said, although for so many years no prescription has elapsed. Nor does it matter that only Oscar requests the relaxation of the marriage bond, which Sophia had previously also hoped to obtain. For, in obtaining such a dispensation, the mutual consent of the spouses is not required, but, if there is a just cause, the Pope can grant it, even against the will of one of them. Because if a just cause exists, the opposition of the other cannot impede the Pope's power. Finally, in one word, we conclude that the marriage between the spouses de Vignaud did not reach its consummation, and that there are causes present for obtaining a dispensation.

OBSERVATIONS OF THE DEFENDER OF MARRIAGE EX OFFICIO. The marriage, which John Oscar, aged thirty years, entered into with the girl Sophia Magdalena Lecoq de Boisbaudran, on the 6th of July, in the year 1865, is alleged to have remained incomplete. However, it is certain and proven that the spouses, having completed the...

[*Latin ed. p. 501*]

ENGLAND. In this case, a couple lived together as husband and wife, and remained under the same roof for more than twenty days; and it is declared by no one that they were not properly married. Nor is the ultimate safeguard against consummation, namely, the testimony of midwives and expert physicians regarding the condition of the woman's body, available. Nevertheless, two most learned consultants, consulted by the

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Superiors of the S.O.G. [likely a religious order], are convinced that the marriage was not consummated. And they are led to this conclusion by the sworn testimony of John du Vignaud, and by seven witnesses, who swear that John is a man of integrity, and that he himself related these things to them. Therefore, Most Reverend Fathers, allow me to briefly expound a matter of the gravest importance, which clearly demonstrates the trustworthiness of John and his witnesses in the present case. Indeed, if you hear John and the witnesses whom he presents, the account of the reluctance of Sophia Magdalena to consummate the marriage, and of all the disagreements that arose between the spouses, is as follows: On the very day that we returned from the church to the house, the bridegroom said, "Lidia, the girl, warned the bride that I did not want to receive Lidia, the same girl, into my house." The bride, inflamed with anger, declared that she would request a separation within eight days, unless I would accept the girl into my house. This event was recounted in almost the same words by the witnesses presented by John: Father Edward Martin, Ludovica Maria Druol de Lepine, the widow of Drilhon, and Leopold Vacquier. But pay attention to this point, Eminent Fathers: all of these witnesses speak only of what they heard; but Francis Thommeret, another witness presented by John, who was present at the wedding, swears: that he saw or heard nothing of this matter. Furthermore, it is alleged that Magdalena inflicted a wound with her teeth on John's shoulder, or rather, on his chest, on the first night after the wedding, and that she attempted to throw herself out the window. But John states that the cause was a struggle, rather than a licit act, and that after the coitus, John attempted to commit heinous acts against Magdalena.

[*Latin ed. p. 502*]

In Angouleme, I believe what is asserted, I shall believe. For it is indeed likely that John is being presented in a manner contrary to the truth, being incited to lie by the desire of avoiding disgrace and the intention of dissolving the marriage. But Mary Magdalene would be a liar and a slanderer without any advantage whatsoever; which is not likely to be the case. Furthermore, an excellent theological advisor wastes his time and effort by extolling the virtues of the witnesses who support John, praising their religion, piety, sacerdotal dignity, and other such qualities to the heavens. For these witnesses, with the exception of Francis Thommeret, who accuses John of lying, have seen nothing, but report what they have heard, either from John himself, or from others who have heard it from John. It is, however, not surprising that John has always remained silent about the dishonorable acts with which he tormented his wife. And when the wife returned to another region, it was easily possible for John to persuade all his neighbors that he had done nothing wrong, but that he had refused the marital duties to Mary Magdalene, the worst of women. Before the Bishop of Angouleme, it is said that the woman herself asserted that the marriage

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had not been consummated. She spoke thus, they add, because she was considering other marriages. Mary Magdalene, they add, is stubborn, and does not reveal the lack of consummation of the marriage through her physical appearance. I praise, but I am astonished, that this woman, so wicked, should still remain unpunished, like Minerva, and should rather avoid giving signs of virginity, than to benefit her husband through the signs of virginity. Enough of these trifles. I shall send other matters, including a testimony from a certain doctor, about whom everyone speaks, but no one testifies. Lest I detain the Most Reverend Fathers with useless matters, I do not here inquire what reasons there may be for annulling a marriage contracted twenty-seven years ago; but without delay, I humbly request that the following question be written down: "Should one consult the Most Holy Father regarding a dispensation from a marriage that is valid but not consummated?" <Negative>. Having considered these points on both sides, the intention is to weaken the case.

[*Latin ed. p. 503*]

503 EDICT. A Doubt Regarding Whether Consultation with the Most Holy Congregation is Necessary in the Case of a Marriage Validly Celebrated but Not Consummated. RESOLUTION. The Sacred Congregation, after deliberation on December 12, 1891, decided to respond: Affirmative. FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION: A Doubt Regarding the Consecration of the Oil of Catechumens. Most Illustrious and Reverend Lord, Since on the aforementioned fifth day of the week, during the celebration of the Lord's Supper this year, both Your Eminence and the presbyters present omitted the blessing of the Oil of Catechumens, the General Vicar, acting under Your Eminence's special mandate, inquired whether Your Eminence could consent, and, if not, what course of action should be taken. Indeed, since the resolution of this matter could not immediately be obtained due to the intervening holidays, if there is any priest to be ordained within this Diocese, Your Eminence can either procure the aforementioned oil from a neighboring Diocese, or refer the ordination to one of the neighboring Bishops. To Your Eminence, in Rome, on June 13, 1889. Your most devoted servant, S. CRBTONI, Secretary. Most Blessed Father, The General Vicar N, humbly prostrate at the feet of Your Holiness, at the special mandate of his Bishop, who is currently occupied with the visitation of the Diocese, reports that on the aforementioned fifth day of the week, during the celebration of the Lord's Supper, both the Bishop and twelve presbyters, through complete oversight, omitted the blessing of the Oil of Catechumens.

[*Latin ed. p. 504*]

504. The archives of the Holy Office have been neglected. This deficiency has only recently become known, revealed by two professors of the major

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seminary who were present in the choir. Indeed, the sacred oils have been distributed throughout the diocese; those necessary for the consecration of churches, the altar, and the ordination of priests remain with the Most Reverend Bishop. The following questions are posed: 1. Can the Bishop consent? And, if not, 2. What must be done? On Friday, June 19, 1889, in the general congregation of the Holy Roman and Universal Inquisition, before the Most Eminent and Most Reverend Lords Cardinals, general inquisitors for matters of faith and morals, after the following questions were proposed, and with the prior vote of the Most Reverend Consultors, the aforementioned Most Eminent and Most Reverend Lords ordered that the following response be given: To I. Affirmative. To II. As provided in the first. Furthermore, after a report was made by the Reverend Father, assessor of the Holy Office, regarding these resolutions, to His Holiness, Pope Leo, of blessed memory, XIII, the same Most Holy Pope approved the resolutions of the Most Eminent Fathers. Ios. MANCINI, Secretary of the Holy Roman and Universal Inquisition.

QUESTIONS concerning the privilege of the Bull Cruciata.

My Lord, the following questions, proposed by a certain priest from Katalonien, concerning the privilege of the Bull Cruciata, have been brought to my attention:

I. Whether, according to the aforementioned Bull, it is permissible for Religious, of both sexes, who live within the cloister, to consume eggs and dairy products during the time of Lent, in addition to meat?

II. Whether it is permissible for them, as with other faithful, on certain days, to mix eggs and dairy products with fish?

These questions were proposed in a congregation held on Thursday, November 22.

[*Latin ed. p. 505*]

From the Sacred Congregation, dated 5th of October of the past year, Most Eminent Lords, Cardinals, and together with the General Inquisitors, have decreed: Regular clergy of both sexes, except those who are bound by a special vow, may, by virtue of the *Bulla Cruciatae*, consume meats, eggs, and dairy products, even during the fasts, including Lent, and may also mix eggs and dairy products with fish in the same meal. Furthermore, secular priests residing outside of religious houses are obligated to observe the *Summarium* of meats, as are secular priests. These Most Eminent Fathers have ordered that this decree be communicated to Your Eminence, so that it may be made public. Your Eminence, in Rome, on the 26th of January, 1890. RAPHAEL CARDINAL MONACO. To the Lord Commissioner, Cardinal Patriarch, Archbishop, General of the *Bulla Cruciatae*. Toledo, My Most Eminent and Beloved Lord, in a meeting held on the fourth day of the current month, after having summoned doubts presented

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by Your Eminence in letters dated February 28th of the past year, concerning the interpretation of the most recent decree of this Supreme Congregation regarding the *Bulla Cruciatae*, the Most Eminent Lords, together with the General Inquisitors, have decreed that the aforementioned decree be made public in the following manner: Regular clergy of both sexes, except those who are bound by a special vow, may, by virtue of the *Bulla Cruciatae*, consume meats, eggs, and dairy products, even during the fasts, including Lent, and may also mix eggs and dairy products with fish in the same meal. Furthermore, regular priests residing outside of religious houses (commonly called "exclaustrated"), in addition to the *Bulla Cruciatae* and the *Summarium* of meats, are obligated to observe the *Summarium* of dairy products, as are secular priests. However, for regular clergy residing within religious houses, whether they are priests or laymen, or nuns, the *Bulla Cruciatae* and the *Summarium* of meats are sufficient, unless they are of the Order of the Friars Minor of St. Francis, who possess no goods, for whom the *Bulla Cruciatae* is sufficient. I earnestly implore Your Eminence to ensure that this decree, confirmed by the authority of the Supreme Pontiff, be implemented as soon as possible.

[*Latin ed. p. 506*]

506 Let a public decree of the SACRED CONGREGATION be made, and let a copy of it, already published, be sent to me in the Tabulario of the Supreme Congregation, to be kept there. In the meantime, I wish to express to Your Eminence, whom I most humbly kiss the hand, the highest esteem I have for you. E. T. In Rome, on the 7th of March, 1891. Your most humble and devoted servant, the true R. CARD. MONACO. To the Most Reverend Cardinal of the Bullae Cruciatae, Archbishop of Toletum, General Commissary. INSTRUCTION to the Apostolic Vicars in the Empire of China and neighboring kingdoms and provinces concerning Opium. From what has been repeatedly reported to the Sacred Congregation for the Propagation of the Faith by the Apostolic Vicars of the Chinese regions, it has become known that certain questions have arisen among the evangelical workers who toil there to spread the Christian name, concerning the interpretation of the decrees of the Holy See regarding the cultivation, commerce, and use of opium. In order to put an end to these discrepancies of opinion, after mature and prolonged deliberation, it has been decided by the Most Holy Fathers, with the approval of the Most Holy Pope Leo XIII, that the present instruction be drawn up, which shall serve as a guide for the aforementioned Apostolic Vicars. 1. From the answers given up to now, if they are properly understood, it is clearly evident: that the Holy See has never disapproved of the cultivation, commerce, and use of opium when these serve medicine. 2. It is also evident from the decrees of the Sacred Congregations, both those concerning the permission or tolerance of its use, and those concerning the condemnation of its abuse, that they have a

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relative force, not an absolute one. They refer, indeed, to what is proposed; therefore, they should not be indiscriminately mixed together, but should be referred to the individual cases with their particular circumstances. He who considers this carefully will easily find that it is always so. It will not present any difficulty that in the acts of the Holy See, the use of opium is sometimes called a use, and sometimes an abuse; for the use that is disapproved of must be considered as a true abuse. 3. Therefore, since the Sacred Congregation is concerned with the propagation of the Christian name,

[*Latin ed. p. 507*]

From the Sacred Congregation, 507, having already made its mind known concerning the abuse in question, in the year 1830, "in order to remove doubts and perplexities that may arise in particular cases," it deemed it necessary to draw up an instruction, in which it wished to give due consideration to both the civil law prohibiting the opium trade, and the most serious evils that are commonly derived from the abuse of opium in those regions. This instruction was ordered to be sent to the Apostolic Vicars of Yunnan and Malacca in the year 1848, adding that, given the general harm, every effort should be made to eradicate the use of opium. Where the word "use" is employed, as everyone easily understands, it properly signifies abuse. For it was not of the use to which opium is adapted by nature that it was speaking, but of that which prevails among the Chinese, which consists in chewing it, or drinking it mixed in potions, or inhaling its smoke.

4. Therefore, the Supreme Congregation declared in the year 1852 that, in general, the commerce and use of opium are illicit, and, as was explained, it ordered the Apostolic Vicars to use every effort to eradicate that use and commerce completely. It did not consider it necessary to retract from this decree in the year 1858, although it had been reported by the Apostolic Vicars of Xensi and Hunan that the civil law prohibiting opium no longer existed.

5. Nor is it to be considered that it receded from this prohibition in the year 1878. For, due to particular and entirely extraordinary circumstances, which were explained, and due to the suspension for ten years of the civil law prohibiting the cultivation of opium in those regions that had been devastated by war, and because the inhabitants had been reduced to extreme poverty, the Supreme Congregation decided only that the sacraments should not be denied to those Catholics who, during that ten-year period, had cultivated opium solely to alleviate poverty, as permitted by the civil law. And when it was asked whether those who cannot give up opium due to a long-standing habit, except with the risk of death or serious detriment, may be admitted (to the sacraments), and whether opium may be taken as medicine, because the danger of habit looms, the

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answer was: Affirmative, provided that due diligence and precautions are taken to avoid the abuse of opium and the evil effects resulting from such abuse. From this response, which concerns an exception, everyone can see that...

[*Latin ed. p. 508*]

FROM THE SACRED CONGREGATION 508, the general decrees are not to be weakened, in which the abuse of opium is condemned; and this was clearly declared on Thursday, July 4, 1883. 6. From all of this, it follows: 1° that the cultivation of opium is not, in itself, illicit, but in the regions of China, because of the abuses to which it is subject, it is certainly proven by long experience to become illicit, and therefore it must be generally prohibited to the Christian faithful; 2° nor should the matter be judged differently concerning commerce, which, although not evil in itself, becomes evil because of the grave abuses that flow from it almost universally, and because of the laws that prohibit it; therefore, it must be prohibited not only to those who directly engage in it, but also to those who favor it, namely, those who knowingly lend money to opium merchants, or who lease land for the cultivation of opium; 3° the use of opium, which is said to exist in China, is declared by the Church to be a detestable abuse and illicit; 4° that the same use may be permitted to those who have become accustomed to it, and who are absolutely unable to abstain from it without danger of death or serious detriment; likewise, opium may be taken as medicine, but with the condition that the method and quantity be observed which do not in the least exceed the medicinal purpose, and with due diligence and precautions taken, so that the abuses and the harmful consequences that flow from it may be prevented. This Most Holy Congregation has no doubt that those who are engaged in the work of the Lord in the Chinese Empire and in neighboring kingdoms will give every effort to deter as many as possible from the cultivation, commerce, and use of opium, through constant warnings and exhortations, through pamphlets published for the public as appropriate, through societies, as they say, of temperance, and through other means which, according to the circumstances of the place and the people, they deem more effective and suitable in the Lord. But with regard to those who relapse and are accustomed to these things, the rules given by approved authors must be followed. Given in Rome, on December 29, in the year 1891. o R. CARD. MONACO.

[*Latin ed. p. 509*]

509 APPENDIX II. EXHIBITING ACTS FROM THE SUPREME APOSTOLIC OFFICE, TIMELY ONES WHICH HAVE ALREADY BEEN ESTABLISHED, BENEFITING THE MODERATOR OF THE EPHEMERIDES. - Decree of the Sacred Congregation for the Propagation of the Faith, September 22, 1827. A DOUBT concerning jurisdiction in the death of

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an Apostolic Vicar. Since in a Congregation held on July 2 of the current year, the following doubt was proposed: — Whether, in the case of the death of any Apostolic Vicar in China or in neighboring kingdoms, who has died without having previously named any general vicar or provicar who will succeed him in the administration of the Vicariate, and therefore a question arises concerning the rights of administering said Vicariate, it is fitting, in order to prevent damages that may arise therefrom, that the nearest Apostolic Vicar, as an Apostolic Delegate, should provide for the interim administration of the vacant Vicariate; — The Sacred Congregation decided to decree: In the negative, according to the manner; that is to say, that in the case of a dispute concerning the rights of several missionaries to administer an Apostolic Vicariate that is vacant, as well as persecution by pagans against the Pro-Vicar Apostolic, and also when it is dangerous to access him, the nearest Apostolic Vicar shall be granted the necessary and appropriate faculties to benefit the vacant Apostolic Vicariate, without, however, assuming the office or title of Apostolic Delegate. This sentence of the Sacred Congregation was presented to the Most Holy Father, Pope Leo XII, by the Reverend Father, the Secretary, in an audience held on September 9 of the same year, and the Most Holy Father approved it in all respects, and granted the necessary faculties. From the Letters of the Sacred Congregation for the Propagation of the Faith, September 29, 1827, to the Apostolic Vicar of Cochinchina, concerning the death of the Apostolic Vicar as mentioned above. Know, Reverend Father Charles Langlois, Superior of the Seminary of Missions for Foreign Lands in Paris, that certain doubts were proposed by him, which were resolved by this same Sacred Congregation as follows: 1. Whether, when an Apostolic Vicar dies, without having a Coadjutor, and without having instituted a general vicar for the entire Mission, a missionary who is specially designated for only one part of the Mission,

[*Latin ed. p. 510*]

510 APPENDIX II. Did the provincial superiors possess the particular faculties, by virtue of the aforementioned Brief, to be considered the superiors of the entire mission, and to be able and obligated to govern it, even though they themselves had not been the first to enter the mission? His Most Holy Eminence responded: Provided, under the date of July 2nd, that the decree already established, that the right to succeed in the interim administration in that case pertains to the alumnus of the Seminary of Paris who is older in the mission.

2. Does the Decree of His Most Holy Eminence concerning the Propagation of the Faith, approved by Pope Pius VI on March 11, 1787, apply indiscriminately to all missionaries, of whatever Order and Institute, or only to those who belong to the same Institute as the deceased Apostolic Vicar? And it was likewise decreed: Decided in the affirmative, and it pertains to

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French missionaries to whom the mission has been entrusted, and to whom the Apostolic Vicar pertains.

3. Can a missionary who is older in the mission cede his right to another, should the case under consideration arise; or is he obligated to exercise it, unless he is entirely unable to do so? And it was decreed: Negatively, and in such a case, recourse must be had to the nearest Apostolic Vicar.

4. Who among them should be considered the senior in the mission; namely, is it the one who precisely first set foot on the ground, even if he was only a deacon or subdeacon, while the other was a priest? The Fathers responded: In judging seniority, account must be taken of the priesthood.

5. If a missionary entered the mission before another, but only long afterwards, either because of illness, or through negligence or lack of ability, and was only then able to learn the language and exercise the ministry of souls, which of these two should be considered the senior in the mission? And the Most Eminent Fathers decreed: The missionary who has exercised the ministry for a longer time should be considered the senior in the mission, and in the case of a dispute, recourse must be had to the nearest Apostolic Vicar.

6. What are the rights of the nearest Apostolic Vicar in that mission which, after the death of the Apostolic Vicar, is exercised either by the surviving general provincial, or by the senior missionary? And the Most Eminent Fathers responded: Provided, under the date of July 2nd, that the aforementioned decree (page 509) is to be understood, in which the cases are determined in which faculties are granted to the nearest Apostolic Vicar, for the good of the vacant Apostolic vicariate. From a letter of the Sacred Congregation for the Propagation of the Faith, dated June 30, 1845, to the Apostolic Vicar of Bengal, concerning the hearing of Mass from one's own parish priest. We cannot approve the plan of compelling the faithful to attend Mass and instruction on feast days, in other churches or chapels, under reservation. For, although we are persuaded...

[*Latin ed. p. 511*]

APPENDIX II. 511. It has been determined that, so that the flock of Christ might receive assistance for eternal life through frequent nourishment from the salutary word of God, Your Eminence has never considered it to be prescribed by the Holy See under a precept, nor bound by the bond of sin. Therefore, we deem it advisable to urge the faithful, through paternal and repeated admonitions, to make better use of these means for the salvation of their souls. Decree of the Sacred Congregation of the Propagation of the Faith, August 18, 1866. Concerning the application of the Mass for the people. After the encyclical letter *Amantissimi Redemptoris*, dated May 3, 1858, by His Holiness Pope Pius IX, it began to be doubted whether, through the provisions contained therein regarding the obligation of pastors and others actively engaged in the care of souls to celebrate and offer

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the Mass for the people on Sundays and other feast days, without exception, even for those who have been removed from or transferred from the number of obligatory feast days by the indulgence of the Holy See, any derogation had been made to previous and praised declarations of the Holy See, by which it had been declared that, in mission territories where neither pastors nor properly established parishes are found, Apostolic Vicars and missionaries, even though exercising the care of souls, are bound only by charity, and not by justice, to fulfill the aforementioned obligation. Furthermore, although His Holiness approved, the Sacred Congregation of the Propagation of the Faith, on August 5, 1860, gave a negative response; nevertheless, some Apostolic Vicars and missionaries, believing that not all ambiguity had been removed by this response, proposed the following questions: 1. Are Apostolic Vicars and missionaries, who in any way assume the care of souls in a certain place, all indistinctly bound by justice to offer the Mass for the people on feast days? 2. And, concerning those who are not bound by justice, should it be said that they are obliged by charity, or that they are held by charity, to offer the Mass for the people on feast days? Now, when these questions were discussed in the general assemblies of the same Sacred Congregation, held on March 23, 1863, the Fathers deemed it necessary to respond as follows: "To 1. Negatively, provided that we are not speaking of places in which episcopal sees and parishes have already been canonically established, and to which Apostolic Vicars and missionaries have been sent to act in place of legitimate pastors. "To 2. It is necessary to avoid the expression 'held by charity,' and to say..."

[*Latin ed. p. 512*]

512 APPENDIX II. "Indeed, it is fitting to do so out of charity, and that in such a way that no proper meaning of the aforementioned obligation appears." These resolutions of the Sacred Congregation were benignly approved by His Holiness Pope Pius IX in a private audience on March 29th. Sacred Congregation of Rites, May 9, 1857. DOUBTS regarding an Apostolic Administrator. 1. By common law, must or can an Apostolic Administrator possess a "solium" (cathedra) in the name of the Gospel? 2. Must or can he possess it even in all places within the territory of his administration? 3. The decrees which state that a Vicarious Apostolic cannot, in his Vicariate, and a Bishop in his Diocese, enjoy certain privileges, among which is the favor of being named by priests in the canon of the Mass, are entirely silent regarding Apostolic Administrators, from which it seems to follow that, especially the Apostolic Administrator of the Diocese of Peking, is not subject to these various prohibitions contained in the aforementioned decrees within the territory of his administration, and that he can, there, do the same as the proper Bishop. Can the present Apostolic Administrator, in the territory of his Apostolic administration, prudently follow this interpretation? Answer: The Sacred Congregation has carefully considered

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each point, and, adhering to the decrees issued in similar cases, especially in the document from Sarsina, dated August 22, 1722, it responds: Negatively, in all respects, according to the wording of point 7 of the document from Sarsina. (1). (1) The wording of that point is as follows: Doubts: 1. Does a modern Bishop of the Città Ducale enjoy, in his ecclesiastical functions, all those eminences and prerogatives which are enjoyed by all other Bishops in their own Dioceses, in this case, etc.? And, to the extent that the answer is negative: 2. Can said Bishop, as administrator of a vacant Church, while singing Mass and Vespers in pontifical form, sit upon the episcopal chair, elevated by four steps, prepared with a baldachin and a backdrop, and use a staff? — 3. Can he grant an Indulgence of forty days without special Apostolic permission? — 4. When attending a solemnly sung Mass by another, must the canons perform the prescribed circuits at the "Kyrie eleison," "Gloria in excelsis," "Credo," "Sanctus," and "Agnus Dei," and where should he then sit? — 5. Should an Anniversary of his Consecration be celebrated with a sung Mass by the Chapter and clergy, and should his name be mentioned in the canon by the celebrating priests? — 6. When the Administrator sings Mass in pontifical form, should a seventh candlestick with a lit candle be placed upon the altar? — 7. When the same Administrator sings Mass in pontifical form, should all the canons be vested in sacred vestments; or should only those performing the offices of deacon, subdeacon, and assisting priest be vested? — 8. When going to the cathedral, should he take the "cappa magna" (tall biretta) in the upper parts of the episcopate, or at the entrance to the church or presbytery? — 9. Should all the canons receive him upon entering the cathedral in those buildings, or only three or four at the door of the church? — Answer: To 1. Negatively. — To 2. Negatively regarding the first part; affirmatively regarding the second. — To 3. Negatively. — To 4. Negatively, and he should sit in the first stall of the choir. — To 5. Negatively. — To 6. Negatively. — To 7. Negatively regarding the first part; affirmatively regarding the second. — To 8. At the discretion of the Administrator in this case, etc. — To 9. It is fitting, in the case in question, that all should attend.

[*Latin ed. p. 513*]

APPENDIX 513 II. Sacred Congregation of the Council, March 16, 1641. Regarding letters of dispensation. Whether Vicars appointed by the Apostolic See with ordinary jurisdiction in vacant dioceses, who do not have Chapters to succeed them in jurisdiction when the See is vacant, can grant dispensations within a year. And what is to be done concerning Vicars appointed by Bishops in the Eastern parts, by virtue of a special privilege granted to them by the Apostolic See. R. The aforementioned Vicars cannot grant dispensations within a year unless they have been specially granted that power by the Apostolic See. Sacred Congregation of the Council, September 25, 1858. Regarding the matter of a pastor serving

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two parishes. 1. Whether a pastor who governs two parishes, and therefore celebrates Mass twice a day, is obligated to apply both Masses to the benefit of both parishes, notwithstanding the scarcity of income. 2. Whether a pastor who celebrates Mass twice on the same day in the same parish is absolutely obligated to apply both Masses gratuitously to the benefit of the people assigned to him. 3. Whether and how dispensations should be granted to pastors who celebrate Mass twice on Sundays and other feast days, so that they may freely apply one Mass and receive a stipend for it, if the case warrants. R. To 1: Affirmative. To 2: Negative, with a firm prohibition against receiving alms for the second Mass. To 3: Negative, and the Bishop should provide according to the form of Constitution Bened. XIV, *Cum semper oblatas* §. 8. (1). (1) The following are found in the cited passage: "With regard to these poor pastors," we grant to each of you (Bishops) the faculty, when you know that they are truly such, to dispense in such a way that, even on feast days, "they may freely and lawfully receive alms from a pious benefactor, and apply the Sacrifice for him, provided that it is required by him, as long as they celebrate Mass in the parish church; but with the condition that they apply as many Masses for the people within the same week as there are feast days occurring within that week, according to the particular intention of the other pious benefactor." Acts, Vol. XXIV, page CCLXXXV, 33.

[*Latin ed. p. 514*]

514 APPENDIX II. Decree of the Sacred Congregation of Councils, March 12, 1662. Concerning the election of a Capitular Vicar to be made by only one member of the Chapter. In the province of Armagh (in Ireland), in various dioceses where there is only one member of the Chapter, for example, the dean or archdeacon, this sole member of the Chapter claims the authority or power to elect the General (Capitular) Vicar; hence the doubt: Whether, when the Chapter is reduced to only one member, in the case of a vacant see, it can, by itself alone, elect a Vicar, as is discussed in Chapter 16, session 24, of the Council of Trent. Answer: Affirmative, provided it does not elect itself. Decree of the Sacred Congregation of Councils, May 14, 1644. Concerning precedence between the parish priest and the Chapter of a Collegiate Church. To whom should precedence be given at funerals: to the deceased parish priest, or to the Chapter of the Collegiate Church? Answer: In matters of funerals, saving the legitimate customs of the place, precedence should be given to the Chapter of the Collegiate Church over the parish priest, even the parish priest of the deceased, without prejudice to the other rights and privileges that belong to the same parish priest by law or by custom. Decree of the Sacred Congregation of Councils, March 23, 1861. Concerning a parish priest who celebrates two Masses. 1. Whether a parish priest who, in order to fulfill the intentions of the founders, celebrates two Masses on Sundays and feast

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days, having obtained permission, and who offers prayers for the founders of the Benefices (which, due to the scarcity of revenues and the lack of priests, are often without a resident priest), can receive a salary from the funds of the Benefice for this particular work. 2. Whether a parish priest who, due to circumstances, celebrates two Masses on Sundays and feast days, and also imparts Christian instruction, can receive a certain annual salary offered by the parishioners for this particular work and effort. Answer: It can be permitted, at the prudent discretion of the Bishop, some remuneration in consideration of the work and inconvenience, excluding any alms for the offering of Masses.

[*Latin ed. p. 515*]

APPENDIX II

515. Sacred Congregation of the Council, August 24, 1867. Concerning the application of the Mass for the people by a canon parochian (parish canon). The parish canon should, by his own action, apply the Mass for the people, even on those days in which the Bishop celebrates pontifically in the cathedral; but another canon should do so on those feasts on which the canon is obligated to chant and apply the conventual Mass for the benefactors.

Sacred Congregation of the Council, May 9, 1874. Concerning the curate's economist with regard to delegated jurisdiction. Can a curate's economist, appointed by the Bishop in the vacancy of a parish, in accordance with the disposition of the Council of Trent, Session 24, Chapter 18, delegate another priest to perform all duties, or only certain acts?

Response: Affirmative, with regard to the first part, unless the will of the Ordinary prevents it.

Sacred Congregation of the Council, July 6, 1867. Concerning canons ad honorem (honorary canons).

1. Are honorary canons permitted to sit in the choir before or after the portionarii and semiportionarii titulares (incumbent portionaries and semi-portionaries), who, although they are obligated to minister as deacons and subdeacons, are nevertheless members of the Chapter?

2. Are honorary canons obligated to wear sacred vestments in pontifical functions; must they wear a planeta, or rather a dalmatica or tunicella (tunic)?

Response: To the first question: Affirmative, after all the portionarii and semiportionarii, insofar as these are also counted among the canons, and sit in the choir with the same rank as the other canons.

To the second question: If the capitular canons are distinguished by or-

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ders, namely, the presbyteral, diaconal, and subdiaconal orders, then honorary canons must wear a tunicella; otherwise, they must wear the same vestment common to all titular canons of whatever order.

[*Latin ed. p. 516*]

516 APPENDIX II. Sacrae Congregationis Sacorum Rituum, 3 Augusti 1639, de Missionibus in Archipelago. DUBIA de privilegiis presbyterorum graecorum.

1. Num sacerdotes greci, praesertim catholici, ea privilegia fruantur quae Latini et praecipue canonis "Si quis suadente etc." concedunt?

2. Num Latini qui eos percutiunt, vel qui eos ad forum laicale turcicum aut apud tribunalia turcorum in ius vocant, vitandi sint sicut excommunicati?

3. Quomodo missionarii se habere debent cum presbyteris graecis qui irregulares facti sunt ex delicto, et maxime ex homicidio voluntario, et cum illis qui abortum procuraverint ad evitandam infamiam?

R. Ad 1. Quoad privilegium canonis, affirmative. Idem de similibus, sed posse excusari ex aliquo capite, v.g. ignorantiae. Ad 2. Quoad primum, affirmative, loquendo de iis qui sunt notorii percussores vel denunciati. Idem de aliis, si citra rationabilem causam id faciant et sint denunciati. Ad 3. Cum iis qui irregulares sunt agendum ut cum latinis irregularibus, videlicet dispensando, si adsit facultas et causa, vel remittendo ad habentem facultatem.

Sacrae Congregationis de Propaganda Fide, C. G. 13 Maii 1816. DUBIA quoad modum providendi sustentationi nonnullorum missionariorum:

1. Num liceat sacerdoti veniam aperire, aut alias quaedam artes medicae exercere?

2. Quis optimus dicendus modus providendi sustentationi ministrorum hisce in novis regionibus?

3. Qualis obligatio incumbit laicis debitum hoc solvendi?

4. Licetne spirituale ministerium denegare iis, aut personis ad illorum spectantibus familiam, v.g. infantibus Sacramentum Baptismi, si huic debito se submittere recusent?

[*Latin ed. p. 517*]

APPENDIX II. 517 R. Regarding 1. It is permissible only if a dispensation has been obtained, and in the case of true necessity. Regarding 2. Provision must be made from the revenues of the churches, and from the voluntary offerings of the faithful. Regarding 3. The faithful must be held in conscience to provide sufficient support for the Ministers of the Church. Regarding 4. It is unworthy of an ecclesiastic, and deserving of censure, to raise the question of sacred matters, and even of Baptism itself, to those who refuse to submit to the due offering. S. C. de Propaganda Fide - C. G.,

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21 September 1840. DOUBTS concerning Apostolic Vicars. 1. Whether and how Apostolic Vicars or local Ordinaries can visit the parishes of Regular missionary priests existing within their territories. 2. Whether the designation or nomination of a Prefect of Missions is sufficient to communicate to the missionaries, who are to perform the duties of parish priests, a legitimate institution, or rather, must they receive it from the local Ordinaries, in which the exercise of this ministry is to be carried out. 3. Whether Apostolic Vicars or local Ordinaries so designated can subject them to examination beforehand. 4. Whether and how these same individuals can remove those once admitted to the care of souls, or restrict their faculties in the administration of the Sacraments. 5. Whether the Patriarchal Vicar of Constantinople can issue instructions for the purpose of carrying out a visitation, to which all parish priests are obliged to respond. R. Regarding 1. Affirmative in all respects, according to the Constitution of Benedict XIV, which begins "Firmandis" 1744. Regarding 2. Negative regarding the first part; affirmative regarding the second, according to the Decree of 1838. Regarding 3. Negative. Regarding 4. Affirmative in all respects, provided that a serious and urgent reason exists, which must be immediately communicated to the Holy Congregation. Regarding 5. Affirmative, with regard to those matters to which they are subject to the visitation and correction of the same.

[*Latin ed. p. 518*]

518 APPENDIX II. From the Instruction of the Sacred Congregation of the Propagation of the Faith, October 18, 1883. Concerning the civil habit of clerics. The Holy Fathers also reviewed what has been debated in some Synods concerning the civil habit of the clergy. In this matter, after confirming what was wisely established concerning this subject in the Synod of Sutchu, chapter X, number 10 (1), they entrusted the remaining matters to the prudent judgment of the bishops, noting only that it is absolutely necessary to proceed with caution regarding the clothing to be used by the clergy, so that difficulties are not aroused among the priests by inappropriate innovations. Furthermore, they ordered that what is prescribed in the Synod of Sutchu concerning certain modes of walking that are too ostentatious be diligently observed, chapter X, number 12 (2). (1) There: "The clothing and habit of missionaries should be honest and decent; not too elegant, nor too shabby, but such as befits their religious state and their apostolic vocation, and which gives precedence to inner moral integrity. They should avoid anything exquisite, anything sumptuous or precious, anything that might be noted for novelty, extravagance, and vanity; but everything should be simple, common, and modest, as befits apostolic men. Adhering to the sacred canons, we forbid them to use silks in their clothing or other adornments; nor should they wear or use in their attire bright or shiny colors, as are often used by praetorian prefects, and by others both secular and women, but (as was once prescribed by the most illustrious John Myriophy-

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tus, Apostolic Vicar of this province, in his pastoral mandate of October 12, 1740) we order that everywhere, even in public, they should wear clothing of black, or blue, or another modest color, preferring nothing but what is common. If anyone has the aforementioned silks or bright garments, we wish that they should quickly relinquish them, and conform to the example of the other pious priests who are modestly dressed. How can they preach poverty and humility of Christ, if they prefer the splendor and ostentation of the world?" (2) There: "In all other matters pertaining to the use or adornment of the body, they should be far removed from all appearance of luxury, extravagance, ambition, or vanity, contenting themselves with what is necessary or useful, modest, and simple. During their visits to Christians and their journeys, they should not walk crowded with baggage and attendants, nor accompanied by a large number of people, carrying with them whatever pertains to their own convenience or ostentation, to the detriment or offense of others, but rather should they appear as apostolic men, and not as wealthy merchants or praetorian prefects."

[*Latin ed. p. 519*]

519 Encyclical Letters from His Holiness Pope Leo XIII to all the Bishops and Catholics of France. Venerable Brothers, Most Dear Sons, Amidst the concerns of the universal Church, on many occasions, during the course of Our Pontificate, We have been pleased to demonstrate Our affection for France and for its noble people. And We have wished, through one of Our Encyclicals still present in the memory of all, to solemnly express, on this subject, the entirety of Our heart. It is precisely this affection that has kept Us constantly attentive to observe, and then to reflect upon, all the events, sometimes sad, sometimes consoling, that have transpired among you in recent years. Comprehending deeply, even at the present time, the extent of the vast conspiracy that certain men have devised to destroy Christianity in France, and the animosity with which they pursue the realization of their design, trampling upon the most basic notions of liberty and justice for the sake of the sentiment of the majority of the nation, and of respect for the inalienable rights of the Catholic Church, how could We not be seized by a keen sorrow? And when We see revealed, one after another, the disastrous consequences of these culpable attacks that conspire to the ruin of morals, of religion, and even of wisely understood political interests, how can We express the bitterness that floods Us and the apprehensions that beset Us? On the other hand, We feel greatly consoled when We see this same French people redoubling, for the Holy See, their affection and zeal, as they see Us, as they should say, more neglected, more persecuted on earth. On several occasions, moved by a profound sense of religion and true patriotism, representatives of all social classes have come from France to Us, happy to contribute to the incessant needs of the Church, eager to ask for guidance and counsel, to be certain that, amidst the present tribulations,

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they will not deviate in any way from the teachings of the Head of the faithful. And We, in turn, either in writing or in person, have openly told Our sons what they had a right to ask of their Father. And far from leading them to discouragement, We have strongly exhorted them to redouble their love and efforts in the defense of the Catholic faith, as well as of their homeland: two duties of the highest order, from which no man, in this life, can escape. And even today, We believe it opportune, indeed necessary, to raise Our voice again, to exhort more urgently. We will not only address the Catholics, but all honest and sensible Frenchmen, to do so.

[*Latin ed. p. 520*]

These LETTERS shall repel from them all seeds of political dissent, so that they may dedicate their efforts solely to the pacification of their homeland. All understand the value of this pacification; all, moreover, increasingly call for it in their prayers. And We, who desire it more than anyone, since We represent on earth the God of peace (1), invite, through these Letters, all upright souls and all generous hearts to support Us in making it stable and fruitful. Above all, let us take as our starting point a well-known truth, subscribed to by every man of sound mind and highly proclaimed by the history of all peoples, namely that religion, and religion alone, can create social bonds; that it alone is sufficient to maintain the peace of a nation on solid foundations. When various families, without relinquishing the rights and duties of domestic society, unite, inspired by nature, to become members of a larger family, called civil society, their goal is not only to find therein the means to provide for their material well-being, but above all to draw from it the benefit of their moral improvement. Otherwise, society would rise little above an aggregation of beings without reason, whose entire life is in the satisfaction of sensual instincts. Moreover, without this moral improvement, it would be difficult to demonstrate that civil society, far from being an advantage for man as a man, would not be to his detriment. Now, morality, in man, by the very fact that it must encompass so many different rights and duties, since it is an element in every human act, necessarily presupposes God, and with God, religion, that sacred bond whose privilege it is to unite man with God, prior to any other bond. Indeed, the idea of morality primarily implies an order of dependence on the true, which is the light of the mind; on the good, which is the end of the will. Without the true, without the good, there is no morality worthy of the name. And what, therefore, is the principal and essential truth, from which all other truths derive? It is God. "And what, therefore, is the supreme goodness, from which all other goods proceed? It is God. What, finally, is the creator and conservator of our reason, of our will, of our entire being, as it is the end of our life? Always God. Since religion is the interior and exterior expression of this dependence that we owe to God as a matter of justice, a serious consequence follows that must be

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observed: all citizens are obliged to unite to maintain within the nation the true religious sentiment, and to defend it if necessary, should an atheistic school, despite the protests of nature and history, attempt to banish God from society, thereby ensuring the imminent destruction of the moral sense at the very depths of human conscience. On this point, among men who have not lost the notion of what is right, no dissension can exist. In French Catholics, the religious sentiment must be even deeper and more universal, since they have the happiness of belonging to (1) For God is not a God of dissension, but of peace. (1 Corinthians xiv).

[*Latin ed. p. 521*]

LETTERS 521: On the True Religion. If, indeed, religious beliefs have always been and everywhere presented as the foundation for the morality of human actions and for the existence of any well-ordered society, it is evident that the Catholic religion, by the very fact that it is the true Church of Jesus Christ, possesses more than any other the efficacy desired to "regulate life well, both in society and in the individual." Does one need a striking example? France itself provides it. As she progressed in the Christian faith, one saw her gradually ascend to that moral greatness which she attained as a political and military power. It was because to the natural generosity of her heart, Christian charity had added an abundant source of new energies; it was because her marvelous activity encountered, at the same time as a spur, a guiding light, and a guarantee of constancy, that Christian faith which, through the agency of France, has traced in the annals of the human race such glorious pages. And does not her faith continue even today to add new glories to her past glories? One sees her, inexhaustible in genius and resources, multiplying on her own soil the works of charity; one admires her sending forth to distant lands, where, through her gold, through the labors of her missionaries, even at the cost of their blood, she spreads at the same time the renown of France and the benefits of the Catholic religion. To renounce such glories, no Frenchman, whatever his other convictions may be, would dare: it would be to deny his homeland. Now, the history of a people undeniably reveals what is the generative and preservative element of its moral greatness. Therefore, if this element were to be lacking, neither an abundance of gold nor the strength of arms could save it from moral decadence, perhaps even from death. Who now understands that, for all Frenchmen who profess the Catholic religion, the greatest concern must be to ensure its preservation; and this with all the more devotion, since among them Christianity is becoming, on the part of sects, the object of more implacable hostility? On this ground, they cannot allow themselves either indolence in action or division of parties; the former would accuse a cowardice unworthy of a Christian, the latter would be the cause of a disastrous weakness. And here, before proceeding further, we must point out a calumny cleverly spread, in order to credit Catholics and even the

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Holy See itself with odious imputations. It is alleged that the unity and vigor of action instilled in Catholics for the defense of their faith have, as a secret motive, far less the safeguarding of religious interests than the ambition of securing for the Church a political domination over the State. Truly, this is to revive an ancient calumny, since its invention belongs to the first enemies of Christianity. Was it not first formulated against the adorable person of the Redeemer Himself? Yes, He was accused of acting with political aims, while He illuminated souls with His preaching, and He relieved the physical or spiritual sufferings of the unfortunate with the treasures of His divine goodness: "We have found this man, who goes about disturbing our peace."

[*Latin ed. p. 522*]

522 Letters were sent to the people, forbidding them to pay tribute to Caesar, and these letters were signed "The Christ-King." "If you grant Him freedom, you are not a friend of Caesar, for whoever claims to be king opposes Caesar..." (1) "We have no king but Caesar." (2) It was these threatening calumnies that wrung from Pilate the sentence of death against Him, whom on many occasions he had declared innocent. And the authors of these lies, or others of the same force, spared nothing to spread them far and wide, through their emissaries, as Saint Justin the Martyr reproached the Jews of his time: "Far from repenting after you learned that He had risen from the dead, you sent, with carefully chosen men, throughout the entire world, those who would declare that a heresy and a certain impious sect had been stirred up by a certain seducer called Jesus of Galilee." (3) In so boldly defaming Christianity, its enemies knew what they were doing; their plan was to stir up a formidable adversary against its spread, namely, the Roman Empire. The calumny took hold; and the pagans, in their credulity, clamored for the first Christians to be called "useless beings, dangerous citizens, agitators, enemies of the Empire and of the emperors" (4). In vain did the apologists of Christianity, through their writings, and in vain did the Christians, through their virtuous conduct, strive to demonstrate how absurd and criminal were these accusations: they would not even listen. Their very name was enough to warrant a declaration of war; and the Christians, simply by being Christians, and for no other reason, were inevitably placed in this alternative: either apostasy, or martyrdom.

The same grievances and the same rigors were repeated, more or less, in the centuries that followed, whenever governments unreasonably jealous of their power, and animated by malicious intentions against the Church, were encountered. They always knew how to bring before the public the pretext of the supposed encroachments of the Church upon the State, in order to provide the State with a semblance of right in its transgressions and violence against the Catholic religion. We have taken care to recall these past events in a few strokes, so that Catholics may not be disconcerted

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by the present. The struggle, in essence, is always the same: always Jesus Christ set against the contradictions of the world; always the same means employed by the modern enemies of Christianity, means that are very old at their root, scarcely modified in form.

(1) "We have found this man persuading men to give no tribute to Caesar, and to say that he himself is Christ the King." (Luke 23:2). "If you release Him, you are not Caesar's friend; for everyone who makes himself a king opposes Caesar..." "We have no king but Caesar." (John 19:12-15).

(2) "It is far from the case that you have repented, after you have learned that He has risen from the dead, but you have also... sent, with the most distinguished men, throughout the entire world, those who would declare that a heresy and a certain impious sect have been stirred up by a certain seducer called Jesus of Galilee." (Dialogue with Trypho).

(3) Tertullian, In Apologeticus; Minucius Felix, in Octavius.

(4) This reference is implied, but not explicitly stated in the provided text. It is a common accusation leveled against early Christians.

[*Latin ed. p. 523*]

Letters 52. Always, and with the same means of defense, clearly indicated to the Christians of the present time by our apologists, our doctors, our martyrs. What they did, it is incumbent upon us to do in turn. Therefore, let us place above all the glory of God and of His Church; let us work for it with constant and effective dedication; and let us leave the care of success to Jesus Christ, who says to us: "In the world, you will be oppressed; but have confidence, for I have overcome the world" (1). To achieve this, as we have already noted, great unity is necessary, and if we wish to attain it, it is essential to set aside all concerns that could diminish its strength and effectiveness. Here, we intend primarily to allude to the political divisions of the French, regarding the conduct to be adopted towards the present Republic: a matter which We desire to treat with the clarity demanded by the gravity of the subject, starting from principles and proceeding to practical consequences. Various political governments have succeeded each other in France during this century, each with its distinctive form: empires, monarchies, republics. If one were to confine oneself to abstractions, one might arrive at a definition of which of these forms is the best, considered in themselves; one can also truthfully affirm that each of them is good, provided that it knows how to proceed rightly towards its end, that is, the common good, for which social authority is constituted; it is also fitting to add that, from a relative point of view, one form of government or another may be preferable, as being better suited to the character and customs of a particular nation. In this speculative order of ideas, Catholics, like all citizens, have full freedom to prefer one form of government to another, precisely because none of these social forms, in themselves, opposes the dictates of sound reason, nor the maxims of Christian doctrine. And this

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is sufficient to fully justify the wisdom of the Church when, in its relations with political powers, it sets aside the forms that distinguish them, in order to deal with them regarding the great religious interests of the people, knowing that it has the duty to safeguard them, above all other interests. Our previous Encyclicals have already expounded these principles; it was, however, necessary to recall them, for the development of the subject that occupies us today. But if one descends from abstractions to the ground of facts, we must be careful not to deny the principles just established: they remain unshakable. Only, when embodied in facts, they take on a character of contingency determined by the environment in which their application occurs. In other words, if each political form is good in itself and can be applied to the government of peoples, in fact, however, one does not find political power in all peoples under the same form; each possesses its own. This form arises from the totality of historical or national circumstances, but always human, which give rise to it.

(1) "In mundo pressurum habebitis: sed confidite, ego vici mundum." (John 16:33)

[*Latin ed. p. 524*]

324 Laws arise in a nation, establishing its traditional and even fundamental principles; and through these laws, a particular form of government is determined, as is the basis for the transmission of supreme power. It is unnecessary to recall that all individuals are obligated to accept these governments, and to attempt nothing to overthrow them or to change their form. From this it follows that the Church, the guardian of the truest and highest understanding of political sovereignty, since it derives it from God, has always condemned the doctrines and has always condemned those men who rebel against legitimate authority. And this, even when those who held power abused it against the Church, thereby depriving themselves of the most powerful support for their authority, and of the most effective means of obtaining obedience to their laws from the people. It cannot be too strongly emphasized, on this subject, the famous precepts that the Prince of the Apostles gave to the first Christians amidst persecutions: "Honor all men: love your brotherhood: fear God: honor the king" (1). And those of Saint Paul: "I urge you therefore, first of all, that supplications, prayers, intercessions, and thanksgivings be made for all men, for kings, and for all who are in authority, that we may live quietly and peaceably in all godliness and reverence; for this is good, and pleasing in the sight of God our Savior" (2). However, it must be carefully noted here: whatever the form of civil powers may be in a nation, it cannot be considered so definitive that it must remain immutable, even if that was the intention of those who, at the beginning, established it. Only the Church of Jesus Christ has been able to preserve, and will certainly continue to preserve until the consummation of time, its form of government. Founded

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by He who was, who is, and who will be forever (3), it received from Him, from its very origin, everything that it needs to pursue its divine mission through the ever-changing ocean of human affairs. And, far from needing to transform its essential constitution, it does not even have the power to renounce the conditions of true freedom and sovereign independence with which Providence has endowed it for the general good of souls. But, as for purely human societies, it is a fact engraved countless times in history that time, that great transformer of all things here below, operates profound changes in their political institutions. Sometimes it is limited to modifying something in the established form of government; at other times, it goes so far as to completely replace the original forms with entirely different forms, without exception even the mode of transmission of sovereign power. (1) "Honor all men; love your brotherhood: fear God: honor the king," (1 Peter 2:17). (2) "I urge you therefore, first of all, that supplications, prayers, intercessions, and thanksgivings be made for all men, for kings, and for all who are in authority, that we may live quietly and peaceably in all godliness and reverence; for this is good, and pleasing in the sight of God our Savior" (1 Timothy 2:1-2). (3) "Jesus Christ is the same yesterday, today, and forever" (Hebrews 13:8).

[*Latin ed. p. 525*]

LETTERS 525 And how do these political changes, of which We speak, come about? They often follow violent crises, too often bloody, amidst which pre-existing governments effectively disappear; then anarchy reigns; soon, public order is disrupted to its very foundations. At that point, a social necessity arises for the nation; it must, without delay, provide for itself. How could it not have the right, and even more so the duty, to defend itself against a state of affairs that disturbs it so deeply, and to restore public peace within the tranquility of order? Now, this social necessity justifies the creation and existence of new governments, whatever form they may take; for, in the hypothesis we are considering, these new governments are necessarily required by public order, since any public order is impossible without a government. It follows that, in such circumstances, all the novelty is limited to the political form of civil powers, or to their mode of transmission; it does not affect the power itself, considered in itself. This power continues to be immutable and worthy of respect; for, considered in its nature, it is constituted and imposed to provide for the common good, the supreme purpose that gives rise to human society. In other words, in every case, civil power, considered as such, is from God and always from God: "For there is no power but of God" (1). Therefore, when new governments, representing this immutable power, are established, to accept them is not only permitted, but demanded, and even imposed by the necessity of the social good that created and maintains them. All the more so, since insurrection kindles hatred among citizens, provokes civil

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wars, and can plunge the nation into the chaos of anarchy. And this great duty of respect and dependence will endure, as long as the demands of the common good require it, since this good, after God, is the first and last law in society. Thus, it explains itself the wisdom of the Church in maintaining its relations with the numerous governments that have succeeded each other in France, in less than a century, and never without producing violent and profound upheavals. Such an attitude is the safest and most salutary course of action for all Frenchmen, in their civil relations with the Republic, which is the current government of their nation. Far from them should be those political dissensions that divide them; all their efforts should be combined to preserve or restore the moral greatness of their homeland. But a difficulty arises: "This Republic," it is pointed out, "is animated by sentiments so anti-Christian that honest men, and even more so Catholics, could not conscientiously accept it." This, above all, is what gave rise to the dissensions and aggravated them. One would have avoided these regrettable divergences, if one had known how to carefully consider the considerable distinction that exists between constituted powers and legislation. Legislation differs so much from political powers.

(1) Romans XIII, 1.

[*Latin ed. p. 526*]

o26 Letters, and their form, can be such that, even under a regime whose form is the most excellent, the legislation may be deplorable; whereas, conversely, under a regime whose form is the most imperfect, an excellent legislation may be found. To prove this truth, with the aid of history, would be an easy matter; but what is the point? All are convinced of it. And who is better able to know this than the Church, which has striven to maintain customary relations with all political regimes? Certainly, more than any other power, she is able to say what consolations or sorrows the laws of the various governments that have successively ruled the peoples, from the Roman Empire to the present day, have often brought. If the distinction just established is of major importance, it also has its manifest reason: legislation is the work of men invested with power and who, in fact, govern the nation. Hence, in practice, the quality of laws depends more on the quality of these men than on the form of the power. These laws will therefore be good or bad, depending on whether the legislators have minds imbued with good or bad principles, and whether they are guided by prudence or by passion. That, in France, for several years, many important acts of legislation have stemmed from tendencies hostile to religion, and therefore to the interests of the nation, is the admission of all, unfortunately confirmed by the evidence of facts. We ourselves, obeying a sacred duty, addressed strongly felt complaints to him who was then at the head of the Republic. These tendencies, however, persisted, the evil worsened, and it is not surprising that the members of the French episcopate, placed by

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the Holy Spirit to govern their different and illustrious Churches, have, quite recently, considered it an obligation to publicly express their sorrow concerning the situation created in France for the Catholic religion. Poor France! God alone can measure the abyss of evils into which she would fall if this legislation, far from improving, persisted in such a deviation, which would lead to tearing from the minds and hearts of the French the religion that has made them so great. And this is precisely the ground on which, setting aside all political disagreements, good men must unite as one to combat, by all legal and honest means, these progressive abuses of legislation. The respect that is due to constituted powers cannot forbid this; it cannot demand either respect, nor much less, unlimited obedience to any legislative measure whatsoever, enacted by these same powers. Let this not be forgotten: the law is a prescription ordered according to reason and promulgated, for the good of the community, by those who have received the deposit of power for this purpose. Consequently, one can never approve of points of legislation that are hostile to religion and to God; on the contrary, it is a duty to condemn them. This is what the great Bishop of Hippo, Saint Augustine, illuminated perfectly in this reasoning full of eloquence: "Sometimes, the powers of the earth are good and fear God: at other times, they do not fear Him."

[*Latin ed. p. 527*]

LETTERS 527, concerning idolatry. Christian soldiers served this impious emperor. But, whenever the cause of Jesus Christ was involved, they acknowledged no one but He who is in heaven. If Julian commanded them to honor the idols and incense them, they placed God above the emperor. But if he said, "Form your ranks to march against such an enemy nation," they obeyed immediately. They distinguished the eternal Master from the temporal master, and yet, for the sake of the eternal Master, they were subject even to such a temporal master (1). We know that the atheist, through a lamentable abuse of his reason and even more of his will, denies these principles. But, ultimately, atheism is such a monstrous error that it can never, for the honor of humanity, extinguish the conscience of God's rights in order to substitute the idolatry of the State. Since the principles that should govern our conduct towards God and towards human governments have thus been defined, no impartial man can accuse the French Catholics, if, without sparing either labors or sacrifices, they work to preserve for their homeland what is for it a condition of salvation, what encompasses so many glorious traditions recorded by history, and which every Frenchman has a duty not to forget. Before concluding this Letter, We wish to touch upon two other related points, which, being more closely connected to religious interests, may have caused some division among Catholics. One of these is the Concordat, which, for so many years, has facilitated harmony in France between the government of the Church and that of the

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State. Regarding the maintenance of this solemn and bilateral Pact, always faithfully observed by the Holy See, even the adversaries of the Catholic religion do not agree. Some of the most vehement desire its abolition, in order to leave the State complete freedom to harass the Church of Jesus Christ. Others, on the contrary, with more cunning, want, or at least claim to want, the preservation of the Concordat: not because they recognize the State's duty to fulfill its obligations to the Church, but solely to benefit from the concessions made by the Church; as if one could, at will, separate the obligations undertaken from the concessions obtained, when these two things are an integral part of a single whole. For them, the Concordat would therefore remain only as a chain intended to hinder the freedom of the Church, that sacred freedom to which it has a divine and inalienable right. Which of these two opinions will prevail? We do not know. We have only wanted to recall them, in order to recommend to Catholics that they not provoke division on a matter which belongs to the Holy See to address.

(1) "For the powers that are, are sometimes ordained for good, and sometimes not; and some fear God, and some do not fear God." Julian was an impious emperor, an apostate, unjust, and an idolater: Christian soldiers served the impious emperor; but when it came to the cause of Christ, they acknowledged no one but Him who is in heaven. If at times he wanted them to worship idols, to offer incense, they placed God above him; but when he said, "Bring forth the army, go against that nation," they obeyed immediately. They distinguished the eternal Lord from the temporal lord; and yet, for the sake of the eternal Lord, they were subject even to that temporal lord. (ENARRAT, in Psalm, cxxiv, n. 7, nn.).

[*Latin ed. p. 528*]

528 LETTERS: We shall not speak with the same emphasis on the other point, concerning the principle of the separation of the State and the Church, which amounts to separating human law from Christian and divine law. We do not wish to stop here to demonstrate all that is absurd in the theory of this separation; each person will understand it for themselves. As soon as the State refuses to give to God what is due to God, it necessarily refuses, as a consequence, to give to the citizens what they are entitled to as men; for, whether they will it or not, the true rights of man arise precisely from their duties towards God. Therefore, it follows that the State, by failing, in this respect, the principal purpose of its institution, in reality, ends up denying itself, and contradicting what is the reason for its own existence. These higher truths are so clearly proclaimed by the very voice of natural reason, that they impose themselves on every man, unless blinded by the violence of passion. Consequently, Catholics should take great care not to support such a separation. Indeed, to want the State to separate itself from the Church would be, as a logical consequence, to want the Church to be reduced to the freedom to live

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according to the common law of all citizens. This situation, it is true, exists in some countries. This way of being, although it has many and serious disadvantages, also offers some advantages, especially when the legislator, through a fortunate inconsistency, does not fail to be inspired by Christian principles; and these advantages, although they cannot justify the false principle of separation, nor authorize its defense, nevertheless make a state of affairs worthy of tolerance, which, in practice, is not the worst of all. But in France, a Catholic nation by its traditions and by the present faith of the majority of its citizens, the Church must not be placed in the precarious situation that it suffers in other countries. Catholics can all the less advocate for separation, since they know better the intentions of the enemies who desire it. For these latter, and they say it quite clearly, this separation is the complete independence of political legislation from religious legislation; moreover, it is the absolute indifference of the power with regard to the interests of Christian society, that is, the Church, and the very denial of its existence. They do, however, make a reservation which is formulated as follows: As soon as the Church, using the resources that common law leaves to even the least of French citizens, knows how, through a redoubling of its natural activity, to promote its work, then the State intervening can and must place French Catholics outside the common law itself. To put it all in one word, the ideal of these men would be a return to paganism: the State recognizes the Church only on the day when it pleases to persecute it. We have explained, Venerable Brothers, in a concise, but clear manner, if not all, then at least the main points on which French Catholics and all sensible men must practice union and concord, in order to heal, as much as is still possible, the ills that afflict France, and to restore even its moral greatness. These points are: religion and the fatherland, political powers and legislation.

[*Latin ed. p. 529*]

LETTERS 529: Concerning the conduct to be observed with regard to these powers and this legislation, the Concordat, the separation of the State and the Church. — We harbor the hope and confidence that the clarification of these points will dispel the prejudices of many men of good faith, facilitate the pacification of minds, and through it, the perfect union of all Catholics, to support the great cause of Christ who loves the French. What consolation it is to Our heart to encourage you in this path, and to behold you all, responding so readily to Our call! — You, Venerable Brothers, by your authority and with the zeal so enlightened for the Church and the nation, which distinguishes you, will bring powerful aid to this work of peace. — We even hope that those in power will be pleased to appreciate Our words, which aim at the prosperity and happiness of France. In the meantime, as a pledge of Our paternal affection, We bestow upon you, Venerable Brothers, upon your clergy, and upon all Catholics of France,

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the Apostolic Blessing. Given at Rome, on the 16th of February, in the fourteenth year of Our pontificate. LEO PP. XIII.

(Latin Version)

Venerable Brothers, and most beloved Sons. Among the most serious concerns which We bear for the entire Church, We have deemed it fitting to testify, in Our time as Pope, to the benevolent affection of Our heart towards Gallia, and its generous people; and We wished to solemnly express the innermost feelings of Our mind on this matter in one of Our Encyclicals, the memory of which is still present to all. Indeed, We have been continually moved by these feelings, so that We might have a reverent and rational regard for this nation; and furthermore, We have recalled with Ourselves the series of events, whether sad or joyful, which have occurred among you here in recent years. Seriously and intimately considering the nature of that conspiracy, in which so many here have become involved, to utterly destroy the Christian Religion in Gallia; and the animosity with which they strive to achieve the full and complete effect of their plans, even by trampling underfoot the very first notions of liberty and justice, paying no regard either to the public opinion which a large part of the nation professes, or to the most sacred rights of the Holy Catholic Church, how can We fail to be deeply grieved? And since the fatal consequences of these unjust attacks, which are wise in their actions, and which affect morals, and religion, indeed even the republic...

[*Latin ed. p. 530*]

530 When letters are understood, we perceive the imminent threat of ruin, and we see how the consequences that follow can be expressed in words, revealing the grief of the soul with which we are overwhelmed, and the fears of the mind that torment us. Moreover, we are greatly comforted when we observe that the very people of Gallia, who are seen to be abandoned, or rather, treated with hostility, are doubling their love and zeal for the Holy See. Frequently, men of the highest rank, moved by the deepest sense of religion and sincere love of their country, distinguished Orators and Representatives of all Orders of civil society, have spontaneously come to us from Gallia, eager to provide assistance to the Church in her grave and continuous needs, and desiring to learn from us the principles and counsel of Christian wisdom, so that they might be assured that they would never, even in the public calamities of these times, deviate from the teachings of Him who is the Head of all the Orthodox, but would always remain steadfast. And we, in turn, have most clearly urged our children, both in word and in writing, to demand what they are justly entitled to from their own Father. And we have not led them to despair; rather, we have strongly encouraged them to increase their love and zeal in the defense of the Catholic Faith and their country, for these are two of the most important duties of a man, from which no one can withdraw while

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he lives. And today, we believe it is fitting, indeed necessary, to once again raise our voice, to urge more insistently, not only Catholics, but all honest and sensible citizens of Gallia, to strive to eradicate and banish from themselves the root of all political divisions, so that they may devote all their strength to establishing the peace of their country. The value of this peace is recognized by all; every day, more and more people desire and demand it with the greatest eagerness. We, who desire it above all others, because we represent on earth the one who is the God of peace, we, I say, through these letters, call upon all honest, upright, and generous citizens here present to heed our plea, so that it may be made stable and fruitful. First of all, let us adopt as a common principle and foundation of prayer a truth that is well known; to which, indeed, all men of sound mind readily assent, and which is proclaimed by the history of all peoples: namely, that religion, and indeed only religion, can establish the true and perfect peace, and is sufficient to establish and preserve it in any nation on solid foundations. If, at times, several families, fulfilling the duties and obligations of domestic society, were to unite in such a way that they became members of a larger society, which is now called civil society, their purpose and goal would undoubtedly be not only to seek assistance by which material well-being can be achieved, but above all to care for the greatest good, which is the moral perfection of the citizens. Otherwise, this society would be of little use to any group of animals, whose entire life consists in the satisfaction of sensual instincts. Furthermore, without a striving to promote this moral perfection, it would be difficult.

[*Latin ed. p. 531*]

LETTERS 531: It can be demonstrated that civil society, for man as a man, is perhaps not entirely useful, but certainly not harmful. Indeed, moral perfection in man, for this very reason, requires that he reconcile within himself diverse laws and duties; since it penetrates all human actions as a certain element, it necessarily demands God, and with Him, Religion, that is, the sacred bond which has the unique privilege of uniting man to God before any other moral bond. For the idea of morality first carries with it a certain order of dependence, both with regard to truth, which is the light of the soul, and with regard to the Good, which is the end of the will: without Truth, without Good, there is nothing that deserves to be called moral. Therefore, what is the principal and essential truth from which all truth is derived? God. Again: what is the supreme Good, from which all other good proceeds? God. Finally, who is the Creator and Preserver of human reason and will, and of everything that we are ourselves, as He is also the ultimate end of our lives? Certainly, God. Since Religion is the internal and external expression of that obedience to which we owe ourselves to God in the name of justice, it follows that all citizens are obligated to observe, protect, and, if necessary, vigorously defend the true Religion in their nation. If, for

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example, any sect were to attempt to exclude God from society, confident that, as soon as possible, all sense of morality would be extinguished in the depths of human conscience, it would certainly be the case that there would be no further disagreement among those who have not lost the notion of honesty. In the French Catholics, this religious sense must undoubtedly be even deeper and more universal, since they enjoy the honor of belonging to the true Religion. Indeed, if the dogmas of any religion were always and everywhere applied as the foundations for defining the honesty of human actions and for perfecting the constitution of any well-ordered society, it is entirely evident that the Catholic Religion, precisely because it is the true Religion of Christ Jesus, possesses a greater efficacy than all others in everything that is necessarily required to guide the lives of citizens, or of the entire human society, according to the norms of right reason. What splendid example of this is needed? France itself provides it to us. For the more Christianity flourished in France, the more it progressed step by step towards that height of glory to which it eventually reached; namely, the highest power at home and abroad. Indeed, the natural magnanimity of the French was enriched by Christian charity, adding a source of new strength: the wonderful zeal of their actions immediately became a kind of spur to glory, guiding the light and constancy of communities, so that the Christian Faith, through the hand of France, has inscribed such glorious pages in the annals of mankind. And does not this Faith, even today, continue to add new glories to the illustrious deeds of France? With inexhaustible ingenuity and strength of spirit, in the common Fatherland...

[*Latin ed. p. 532*]

532 The works of charity are seen to multiply daily, and it is observed that they spread with admiration even to the most remote and barbarous regions; where, through their own resources, and through the labors of their evangelizers, and even through the shedding of their own blood, the illustrious name of France, and the benefits of the Catholic Religion, are constantly propagated at the same time. It is certainly not fitting for anyone to deny these outstanding achievements, whatever other private opinions they may hold; for it would be the same as renouncing their homeland. Indeed, the history of any people invariably demonstrates what element is essential for the growth, preservation, and perfection of that people's civil greatness. And if this element should ever be lacking, neither an abundance of gold, nor the power of arms, will be able to save that people from moral decline, and perhaps even from utter ruin. Who, then, does not understand that it should be the primary concern and duty of all Frenchmen who profess the Catholic Religion to defend it with all their might; and this all the more with fervent piety, as the Christian Religion is compelled to endure the most bitter and implacable hatred of treacherous sects? In this endeavor, neither indolence in action, nor division of factions, is ever per-

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mitted; for the former would betray a Christian's unworthy laziness, while the latter would be a cause of sufficient weakness. And here, before proceeding further, it is fitting to recall the slander that has been most widely spread among the people by adversaries, who, through false accusations against Catholics and against the Holy See itself, seek to undermine faith. It is asserted, therefore, that the true purpose and driving force behind the actions of Catholics, which We have undertaken in defense of their Faith, is not, as it appears, the defense of the Religion itself, but rather a hidden and primary motive: namely, to transfer civil domination over the lay principality to the Church. This is a very old slander, which is brought up again; for its invention is rightfully attributed to the earliest opponents of the Christian Religion. Indeed, was not a similar accusation devised from the very beginning against the adorable Person of our Redeemer? Certainly: for it was alleged that He, whether when He illuminated souls with His preaching, or when He healed bodily or spiritual ailments with the treasures of His divine goodness, did so for political reasons. "This man has persuaded many to worship God contrary to our law, and has accused our Emperor, saying he himself is Christ" (Luke 12:2). "If you let this man go, you are not Caesar's friend; for everyone who makes himself king opposes Caesar" (John 19:12-15). These calumnies were so persistent, and mixed with threats, that they finally extorted from Pilate the sentence of death against Him, whom he had declared innocent more than once. The authors of this falsehood, and of others of the same kind, spared no effort to spread them far and wide through their emissaries; just as St. Justin Martyr reproached the Jews of his time: "You are so far from repenting, after you have learned that He has risen from the dead, that you even... through the most distinguished men among you..."

[*Latin ed. p. 533*]

LETTERS 533 "They sent men throughout the entire world who proclaimed that a certain heresy, and indeed a wicked and unjust one, had been stirred up by a certain Jesus of Galilee, a seducer." Thus, while the adversaries of the Christian religion boldly defamed it, they knew very well what they themselves were doing: they intended to achieve something for themselves, and they sought to incite against it a formidable adversary, namely, the Roman Empire. The calumny progressed on its path: and the pagans, heedlessly believing the words of those men, called the first Christians – useless men, dangerous citizens, seditionists, enemies of the Empire and of the Emperor – with great eagerness. (Tertullian, Apology, Minor; Felicitas, in Octavius). In vain did the apologists of the Christian religion strive in their writings, and in vain did the Christians demonstrate their excellent way of life, to show how absurd and wicked such accusations were; neither the pagans nor they deigned to pay attention to them, either with their eyes or with their minds. Indeed, the very name "Christian" was

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to them like a declaration of war; and the Christians saw each other, above all else, united in this very reason: that they must either choose apostasy or martyrdom. These same complaints, and these same rigors, were renewed more or less in the following centuries, whenever supreme rulers happened to encounter the Church with excessive zeal and a malicious spirit. These men always knew how to bring forward, and to publish, as probable causes of condemnation, attacks made upon the Church in the secular principality, so that at least a semblance of justice would be provided for carrying out usurpations, and for inflicting harm upon the Christian Church. We have been compelled by duty to briefly recount these past events, so that Catholics may not lose heart in the present, nor be disturbed. Indeed, the situation regarding the essence of the matter is always the same: Jesus Christ is always presented as a sign of contradiction to men; the same means are always employed by the present enemies of the Christian religion; means that are certainly ancient in substance, and almost unchanged in form; but therefore, the same reasons for defense have always been clearly indicated by our apologists, our doctors, and our martyrs. What they did, we must also do. Therefore, above all else, let us put the glory of God and of His Church first; let us labor with the same steadfast and effective spirit; and let us leave the concern for success to Christ the Lord, who says to us: "These things I have spoken to you, that in me you may have peace. In the world you shall have distress. But have confidence. I have overcome the world." (John 16:33). In order to arrive at that point, as We have already pointed out, a close union of minds is necessary; and if We wish to achieve it, it is necessary to abandon any pursuit of private opinions, which can diminish the force and effectiveness of common action. Here, We especially wish to allude to the civil divisions of the French concerning the method to be employed in the present state of the Republic; this is a question which We desire to treat with the clarity and with the seriousness that the subject itself demands; we shall proceed from certain principles, and then deduce the practical consequences that follow from them.

[*Latin ed. p. 534*]

§34 Numerous and diverse civil governments have existed in the world throughout history, each possessing its own distinct form: Monarchy, Republic, or Democracy. If we consider these forms in the abstract, attempting to determine which is inherently the best, we might arrive at different conclusions. However, it can also be truthfully affirmed that each of them can be good, provided that they are properly directed towards their proper end, namely, the common good for which social authority is established. Furthermore, it should be added that, among these forms, one or another form of civil government may be preferable in certain respects, depending on the character and customs of a particular nation. In this realm of abstract ideas, Catholics, like all citizens, enjoy the full and complete freedom to

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prefer one form of civil government over another, because none of them, when considered in themselves, is contrary to the dictates of right reason or to the dogmas of the Christian Religion. And this is certainly sufficient to fully demonstrate the wisdom of the Church, which in its relations with any civil government does not concern itself with the specific form by which those governments are distinguished, so that it may freely address matters of the utmost importance to the people, knowing that it is obligated by its own mission to protect those interests above all others. We have explained these principles in our previous Encyclicals; it was, however, necessary to recall them again in order to provide a more complete explanation of the matter that concerns us today. If, however, we move from abstract ideas to concrete realities, we must be careful not to abandon the principles that have been established. These principles remain firm; however, when these principles are applied to specific situations, they take on a particular character that is determined by the circumstances. Or, to put it another way: although each form of civil government is inherently good and can be adapted to the supreme governance of a people, in reality, civil authority presents itself to each people in only one form; each people possesses its own unique form. This form, however, arises from a complex of historical, national, and human factors that are specific to each nation. These factors give rise to laws and customs that are passed down to future generations and serve as the foundation for the definition of a particular form of civil government; that is, the foundation for the transmission of supreme power to posterity. It is unnecessary here to remind individuals that they are obligated to submit to these established forms of government, and that they should not attempt to subvert them or to change their form. Therefore, the Church, which alone on earth safeguards the true and sublime notion of civil authority, since it teaches that all power is derived from God, constantly condemns those who reject legitimate authority.

[*Latin ed. p. 535*]

LETTERS 535, ritual. And even at that very time, when Kings and Princes abused the power entrusted to them, they sought the most powerful support for their authority, offering it to all, and the most effective means of obtaining the obedience of the people to the laws of the Empire. It is certainly necessary to deeply consider the precepts of the Apostle Peter on this matter, which He, amidst the persecutions of the pagans, gave to the first Christians in His Epistles: "Honour all men. Love the brotherhood. Fear God. Honour the king" (1 Peter 2:17). Also, the precepts of the Apostle Paul: "I urge, therefore, first of all, that prayers, supplications, intercessions, and thanksgivings be made for all men; for kings and for all who are in authority, that we may live quietly and peacefully in all godliness and reverence; for this is good, and acceptable in the sight of our Saviour God" (1 Timothy 2:1-2). However, it must be diligently noted that whatever the

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form of civil government may be in any nation, it should not be considered as such a definitive form, as if it must remain immutable forever; even if that may have been the intention and will of those who determined it in the beginning. Only the Church of Jesus Christ has been able to preserve its form of government thus far, and undoubtedly it will preserve it until the end of time. For it is founded by Him who is the same yesterday, today, and will be forever (Hebrews 13:8), and from Him, in its very origin, it has abundantly received all that is necessary for the proper execution of its divine mission through this unstable ocean of human affairs. It is so far from being necessary for the Church itself to transform its essential form of government, that it does not even have the power to relinquish the true freedom and supreme autonomy with which divine Providence has endowed it for the sake of the common good. As for mere human societies, it is a fact, confirmed by six hundred historical documents, that this significant transformation of earthly things repeatedly brings about profound changes in their civil institutions. Sometimes the form of government is only slightly changed; at other times, it progresses to the point of abolishing previous forms, replacing them with new ones, and quite different ones; indeed, sometimes it even changes the very way in which supreme power is transmitted to successors. How do these changes, of which we are speaking, affect the state? Sometimes they are followed by crises in a nation, which are very frequent and often bloody; in the heat of which, previous regimes vanish: then, behold, anarchy reigns; and the public order of the state is immediately overthrown to its very foundations. Then a certain social necessity is imposed upon the nation: it is forced to consult itself without delay. I ask, therefore, why should it not have, and indeed ought to have, the right, to withdraw from such a situation, which so gravely disturbs it; and to seek peace.

[*Latin ed. p. 536*]

536. Does the necessity of restoring public order to its former tranquility justify public letters? Indeed, this social necessity rightly confirms the constitution and existence of a new government, whatever form it may take; for, in the hypothesis we are considering, these new governments are temporarily required to restore public order; since no public order can exist without some form of civil government. Consequently, in such circumstances, the entire novelty pertains to the establishment of the form of civil government, or to the unchanging manner in which that government is transmitted to its successors; but in no way does it pertain to the government itself, considered in itself. This, indeed, remains steadfast and worthy of respect: for, if we examine it more closely in its own nature, it is established and imposed for the sake of the common good, which is the supreme reason from which human society derives its origin. In other words: civil power, considered as such, is from God, and always and everywhere only

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from God. - For power, the Apostle writes, is not of ourselves (Romans XIII. I.). Therefore, since new governments, which represent this unchanging power, are themselves established, citizens are not only not forbidden, but even obligated, for the sake of the common good for which they arose and continue to exist, to voluntarily submit to them. Especially when popular rebellion exacerbates hatred among citizens, incites civil wars, and can plunge the nation itself into the chaos of anarchy. This duty of obedience and submission will continue as long as the necessity of the common good demands it; and the common good, with God, is the first and last law of human society. Therefore, it is abundantly clear that the wisdom of the Church is justified in protecting, with mutual relations, those principalities in France, which, less than a hundred years ago, succeeded each other without violent and serious upheavals in the republic. For all the people of France, this method of acting, by which they should conduct themselves towards the republic, which is the present government of their nation, is clearly the safest and most beneficial. Therefore, let political dissensions, which divide them into different factions, be far from them; rather, they should unite and direct all their efforts to preserve, or to restore and elevate, the honor and greatness of their Fatherland. But here, an objection arises: "This republic, (it is alleged) is so abhorrent to Christians and all good men, that honest people, and especially Catholics, could not, with a clear conscience, submit to it." - Especially, it is said, because of the civil dissensions that gave rise to it, and which it has exacerbated. Such a troublesome and inopportune divergence of opinions could easily have been avoided, if the great difference between the already established civil government and the legislation had been carefully and prudently considered. For if the legislation differs so much from the civil government, whatever its form may be, that under the government, with its particular form,

[*Latin ed. p. 537*]

537. It may well happen that a law, however excellent it may seem, is detestable; on the other hand, under a government whose form is the most imperfect of all, the best laws may be enacted. It would be very easy to prove this truth with historical documents; but what is the point of doing so, since everyone is already convinced of it? Indeed, who knows better than the Church, which has always maintained stable relations with all civil governments? Surely, it knows better than any other princes and kings, whether laws have brought it consolation or sorrow, and the laws of those very governments, which have successively governed the peoples from the Roman Empire to our own time. If this distinction seems to be of some importance, it also has a clear reason. For laws are the work of those men who are endowed with civil power, and who actually govern a nation. Consequently, in practice, the quality of laws derives more from the moral condition of these men than from the very form of the civil government.

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Therefore, laws will be either good or bad, depending on whether the legislators are imbued with good or bad intentions, and whether they are guided by civil prudence or by unrestrained passions. In France, for many years now, everyone acknowledges that certain laws of great importance, against religion, and therefore against the common good of the nation, have been enacted with malicious intent; and this is also confirmed by the evidence of events. We ourselves, in fulfilling the sacred office to which we are appointed, have repeatedly made grave and heartfelt complaints to those who then administered the supreme government of the Republic. Nevertheless, they persevered in their anger and hatred of religion; and so the evil became even greater. It is therefore not surprising that the Bishops of France, whom the Holy Spirit has appointed to govern individually these churches, have considered it their duty, and indeed recently, to publicly express their deep sorrow over the very burdensome new situation that the same administrators of the Republic have created for the Catholic Church in France. Alas for France! Only God can permit the profound abyss of evils in which it will be plunged, if this legislation, rather than a better one, persists in its deviation from the path of justice; for it will undoubtedly succeed in completely uprooting religion from the minds and hearts of the French, from which they have achieved such great results among other peoples. Therefore, let there be a firm alliance of all good men, setting aside all political disagreements, in order to use all legitimate and honest means to combat the abuses of civil legislation, which are growing more and more every day. And let this not be prevented by the due respect for constituted authorities. For these authorities cannot demand, nor (much less) impose, the observance or (much less) obedience to any legislative prescriptions, as they are called, which are issued by the very government itself, without any defined limits. Let us not forget: Law is a prescription according to reason.

[*Latin ed. p. 538*]

538 Letters, enacted and promulgated for the common good by those who have received the authority for this purpose. Therefore, the acts of a governing power, which do not carry the force of law, cannot be approved by those who are opposed to religion and to God; on the contrary, they must be utterly condemned. Indeed, the great Bishop Augustine of Hippo eloquently declared this with these words: "Sometimes... authorities are good, and they fear God; sometimes" they do not fear God. Julian was an unfaithful Emperor, an apostate, "unjust, an idolater: Christian soldiers served the unfaithful Emperor," and when it came to the cause of Christ, they acknowledged no one but Him who was "in the heavens." If he wanted them to worship idols, to offer incense, they placed God before them; but when he said, "Bring forth the army, go against that nation," they immediately obeyed. They distinguished the eternal Lord from the temporal lord,

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and yet, because of the eternal Lord, they were subject even to the temporal lord (Enarrat, in Ps. CXXIV. n. 7, end). We know that every atheist, through the deplorable abuse of his reason and, even more so, of his will, denies these principles, but atheism is such a vile error that it can never abolish the awareness of divine law, nor can civil authority suffice for idolatry. Since the principles that should govern our conduct, both towards God and towards human authority, are so clearly defined, no one, however detached from the concerns of others, can accuse Catholics in France of not striving to preserve what is essential to their country, which is an absolute condition for their salvation; what encompasses all the deeds of their ancestors, transmitted to us through history; and what the French people can never allow to be forgotten. Before we conclude these remarks, we would like briefly to mention two other matters closely connected to what we have discussed so far, which, because they directly concern the benefits and reasons of religion, may perhaps have caused some disagreement among Catholics here. The first is what is called the Concordat, which has made relations between ecclesiastical and civil authority easier in France for many years. Whether this solemn and reciprocal agreement, concerning matters pertaining to the Church, has been faithfully observed by the Holy See at all times, and whether it has been equally observed by the French government, is a matter on which even the adversaries of the Catholic religion do not agree. Some of them, more boldly, desire the abolition of this agreement, so that the Church of Jesus Christ may be free from any influence by the civil government. Others, more cunning, desire, or at least pretend to desire, the preservation of this agreement; not because they acknowledge in the civil government the duty of remaining true to the agreements made, and of acting accordingly, but solely in order to enjoy the benefits conferred by the Church on the same civil government: as if anyone could separate the obligations accepted from the benefits received, when these two are so closely connected that they necessarily constitute one thing.

[*Latin ed. p. 539*]

LETTERS 539

1. Therefore, through this so-called Concordat, there will assuredly be nothing further, except a chain by which the freedom of the Church, to which its very divinity, which cannot be alienated, has a right, is most wretchedly restricted. We do not know which of these opinions will prevail; but we have brought them forward only to warn Catholics, lest they provoke dissensions on this matter, the treatment and definition of which entirely pertains to the Holy See. We will not, moreover, use the same manner of speaking when discussing the other opinion of the adversaries, who establish as a principle that the Civil Authority must be separated from the Church, and the Church, in turn, from it. This would be the same

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as separating the power of enacting civil laws from the Christian and divine law. We, however, do not wish to dwell here on the absurdity of such a principle; everyone will easily understand it by themselves. For if the Civil Authority refuses to give to God what is due to God, it necessarily also refuses to render to citizens what is due to them, as men. For, whether they will or not, the true rights of man arise directly from their duties towards God. Consequently, a Civil Authority deficient in this matter destroys the principal purpose for which it was instituted, and in a certain way denies its very reason for existence. These truths, which we have recently stated, are so clearly proclaimed by human reason itself, that they will either obtain the consent, or at least the unwilling agreement, of all those who are not blinded by excessive passions. Therefore, Catholics should be vigilant, as they never can be sufficiently, to prevent the admission and promotion of such a separation. Indeed, to wish to separate the Civil Authority from the Church is the same as wishing (for this is what naturally follows) that the Church should live only with that freedom which is common to all citizens. This condition of life, indeed, sometimes happens to the Church in certain regions. However, this way of living, although it is fraught with countless and very serious inconveniences, may nevertheless offer some advantages, especially when the legislator, revealing himself to be imbued with Christian sentiments and governing in a Christian manner, through a happy and manifest discrepancy and contradiction between the law enacted and the legislator himself. But these advantages cannot make the principle of carrying out such a separation, which is inherently false and unjust, true and just, nor can they give anyone the power to promote it; nevertheless, they make this condition of things tolerable, which, in practice, is certainly not the worst possible. But in France, which is a Catholic nation because of the ancient faith transmitted by its ancestors, which a large part of France professes at the present time, the Church should not be placed in this precarious condition of life, which it is forced to endure among some other peoples. But Catholics are not permitted to promote this separation; the better they know the minds and intentions of the adversaries who seek it. With these last...

[*Latin ed. p. 540*]

The very letters of the adversaries themselves sufficiently manifest this, and such a separation is the same as the complete and integral emancipation of ecclesiastical legislation and power from civil legislation. Indeed, concerning the advantages, rights, and reasons pertaining to Christian society, or the Church, it is absolute contempt; and finally, it is the very denial of its own civil existence. Nevertheless, they establish a certain exception with these words: If the Church, abusing the civil liberty and the protection of laws, by which all, even the smallest, citizens of France are permitted to enjoy common rights, should, through double activity, achieve prosper-

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ous success in its endeavors; then, the very civil government of France, approaching and intervening, will be able, and indeed must, declare all Catholics in France to be exempt from that very common right.

We may encompass all of this in a single statement: The ultimate goal and aspiration of these men would be, if possible, to return human society to paganism; they refuse to acknowledge the civil authority of the Church, unless perhaps it pleases them to exercise it themselves. We, Venerable Brothers, have indeed explained briefly, but clearly, if not all, at least the principal points, concerning which the Catholics of France, indeed all those endowed with sound judgment, ought diligently to strive for union and concord, so that, as far as is possible, they may offer some remedy for the evils that afflict France, and restore its splendor and greatness. These points are: Religion and the Fatherland; Civil Power and Legislation; the proper manner of acting towards that same Power and Legislation; the Concordat, which they call; the mutual separation of civil authority and the Church.

We are indeed led to hope that, through the declaration of these points, and the rejection of the false opinions of those who are not of good faith, a more facile harmony of minds will be achieved, and through it, a perfect unanimity among all Catholics here, in order to fight for Christ, who loves the French. For our heart's consolation, Venerable Brothers, we join you in striving towards this path, and we see that you will respond with a willing mind to our invitation! You, Venerable Brothers, with your authority, and with that illustrious zeal, by which you seem to surpass others, for the sake of the Church and the Fatherland, will bring valuable support to this outstanding work of reconciling peace. We also hope that those who hold civil power will also value these words of ours, which alone concern the prosperity and happiness of France. Meanwhile, as a pledge of our love for France, we gladly impart the Apostolic blessing to you, Venerable Brothers, to your clergy, and to all Catholics who are in France.

Given at Rome, this sixteenth day of February, in the year one thousand eight hundred and ninety-two, in the fourteenth year of Our Pontificate, LEO XIII, POPE.

[*Latin ed. p. 541*]

54. FROM THE SACRED CONGREGATION OF THE COUNCIL, DECREE OF MANDEL, January 23, 1892, Session 25, Chapter 12, Concerning Reforms. SUMMARY OF THE CASE. In the city of Mandel and its territory, the care of souls, which customarily belongs to the Chapter of the Cathedral Church, has for three centuries been exercised by an archpriest, assisted by four priests who provide their services. Of these assistants, two, who hold canonries under the titles of Saint Sylvester and Saint Theodore, in addition to the income from attached benefices, customarily received a portion of the tithes collected by the parish priest, according to established custom, and confirmed by decrees of the Sacred Congregation.

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Specifically, five-sevenths of the tithes were assigned to the archpriest, and the remaining two-sevenths were assigned to the two canons. This practice was strictly observed until the year 1860, when the royal commissioner of Umbria, anticipating future Italian confiscations and adding insult to injury, issued a decree on October 29, by which he abolished the right to collect tithes, promising support to those who had the care of souls in lieu of tithes. With the right to collect tithes abolished, the archpriest of Mandel began to petition the government to obtain this support; and he actually received it on January 22, 1863, in the amount of 852.33 lire annually, with the intention that the two canons, who had lost their share of the tithes, would participate in this sum. In the year 1877, the benefice under the invocation of Saint Sylvester became vacant and was conferred upon the priest Herculi Mazzetti, who, before accepting it, declared in writing that he would send a representative, for the sake of peace, to negotiate regarding the right to tithes that belonged to him, and the equivalent sum of money that the present archpriest receives from the Italian government.

[*Latin ed. p. 542*]

542. In the month of March, 1884, Canon Mazzetti of the Sacred Congregation presented petitions, questioning the validity of the declaration that had been issued, arguing that it had not been issued spontaneously, and requesting that the intrinsic merits of the matter be considered. Then, the priest Francis Pasquarelli, who holds the canonical benefice of Saint Theodore, also approached, and maintained that the support granted by the archpresbyter had been substituted for the right to decline, and therefore should be divided equally among the two coadjutors. The Bishop, after being consulted, stated: considering especially the nature of the support granted by the archpresbyter, no part of it belongs to the coadjutors by right; however, considering the reduction in the benefices, it seems just that a small compensation should be paid annually by the archpresbyter to the coadjutors.

A Synopsis of the Discussion. FROM WHAT IS FEARFUL TO CANONICAL COADJUTORS. After briefly explaining the rights of the parties, it was noted by the canons in favor of the coadjutors that, although the Church renders civil laws ineffective in matters of canon law, nevertheless, according to *Nullius* (*Omnis*) of December 16, 1820, and *Camerinen*, of February 9, 1822, from which practice has been confirmed by more recent decisions, it seemed that pensions and other payments received from the government in place of lost revenues should be considered as being substituted for them. Therefore, if the support in question is to be considered as compensation for the loss of tithes, it would follow that the coadjutors should also participate in it. Indeed, this could be suggested primarily by examining the decree issued by the commissary of Umbria, in which, although the suppression of tithes and the granting of support

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are stated in separate articles, nevertheless, they are connected with the aforementioned considerations. Indeed, the words read there clearly manifest that the legislator intended only that certain revenues should be substituted for uncertain tithe revenues. This is also considered to be confirmed.

[*Latin ed. p. 543*]

MANUELEN. 543 canon laws, stemming from the fact that the aforementioned subsidy is designated by a name that is clearly borrowed from the unjust French laws of 1789 against the Church. Since, moreover, in Gallia at that time, the "congrua" was granted to parish priests in place of tithes, it would not be amiss to assert that this subsidy has the same nature. Nor can this be objected to, so that the decree should be understood as meaning that, for the sake of the end of the law, which does not fall under the law, consideration should be given. For, from I. Nominis and Rei, ff. de ver. signif., we know that the cause for enacting a law and the intention of the legislator must always be considered, because the intention is the soul of the law itself and its reason. Furthermore, since both provisions were included in the same decree, it would not be inappropriate to conclude that parish priests would not have received the subsidy unless the right to collect tithes had first been taken away from them. Moreover, there is a reason why the commissioners were ordered to demand the execution of the decree. One of the actors writes: "The subsidy in question is not granted to those parish priests who did not have the right to collect tithes; rather, any number of souls in the parish and any amount of income from parochial funds are considered. And the first document that must accompany the petition for the subsidy is the testimony of the ecclesiastical court, by which it is affirmed that the parish has the right to collect tithes, and the amount of the tithes is indicated. From this, it is clear not only that the subsidy was granted in place of suppressed tithes, but that its amount is proportionate to the amount of the tithes." Finally, as the Bishop indicated, some argument in favor of the canons could be derived from equity. For, since no one has a right to a portion of the subsidy, it would seem most fitting that he who, by virtue of the decree, has obtained an increase in income as a result of the deprivation of his fellow workers, should at least compensate them to some extent. Especially since the current archpriest, advanced in years and having for many years fulfilled the duties of rector of the seminary and other offices, devotes little or no attention to the care of souls, and his coadjutors are forced to bear the burden of the day and the heat in a large parish. These [coadjutors] do not even have the necessary...

[*Latin ed. p. 544*]

§44. MANUELEN. It appears that a suitable provision is not being made, since it is said that the revenues of the benefices of Saint Sylvester and

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Saint Theodorus scarcely reach 200 florins per year. Therefore, in order that these individuals may not be compelled to earn their living through other means, contrary to what the Apostle teaches, it would be just that they also receive a portion of the support that the insatiable hunger of souls requires, according to the text in Chapter [omitted], second part, "Qui ad onus eligitur, repelli non debet a mercede." As for the declaration of Canon Mazzetti, besides the fact that the reasons arising from equity do not undermine it in the least, it is the opinion of the speaker that the Bishop could not have foreseen the effect of the apostolic bull, which granted to the beneficiary all the rights pertaining to his benefice, which he accepted in order to improve his own condition. Furthermore, this declaration is considered to have no validity, since it was issued under a grave fear of reprisal. Indeed, it is commonly said from Leges 14 ff. de Regulis iuris: "It is not believed that one obeys who obeys out of fear." And according to Cardinal De Luca, in the *Fidei Catechismus*, Book 5, chapter 7, number 7, "Fear of reprisal, it is the opinion of many, when it results in damage or injury, is equivalent to true fear, as deduced by Rovit in *Pragmatica* 1 ad Macedonian, at the end of Chapter [omitted], and in *Latr. Consult.* 54, number 11 and following, and by Buratt in *Decisiones*, 75, number 14." This kind of fear, the Canon Mazzetti affirms, exists in this case.

E. WHAT FRIGHTENS THE ARCHPRIEST. However, on the contrary, it must be considered that the decree issued by the commissary of Umbria, in entirely separate and distinct articles, presents a double provision, and therefore, it seems that support is granted to the parish priests independently of the loss of the right to collect tithes. This is demonstrated, among other things, by the fact that while in the first article the words "i ministri della Religione" [the ministers of the religion] are used in a general sense, in the second article only those who have care of souls are mentioned. It does not seem necessary to investigate the reason or intention of the legislator in this case, since the matter is clear, and therefore does not require interpretation, according to I. Continuus, §, at the end of [omitted], on the words.

[*Latin ed. p. 545*]

MANDELEN. 545 signifies and L, at the end of the pages, which means: the cause of Neptusa, at the end of the pages, concerning the law of dowries. "To refine a matter when it is clear is nothing other than to err perniciously," as I observe, following §§ concerning the Verb and the decision of the Rota before Mantica, 247, number 3. However, even if the sense and reason of the law ought to be investigated, it does not necessarily follow what the canonical coadjutors contend. Indeed, it is stated that the measure of the subsidy to be granted should not be taken from the total of the tithes, but from the frequency of the people and the amount of the parochial revenues. Therefore, it could be best that he who is deprived of the right to collect

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tithes should not receive a subsidy, because he would already receive a suitable portion from the revenues of the benefice. On the contrary, contrary to what the opponents gratuitously affirm, the archpriest defends the subsidy in question, even to those parishes which had never obtained the right to tithe, as long as their revenues do not reach annual sums of 800 or 1200, according to the number of the people. In confirmation of this matter, he cites a certain declaration of a parish priest of the place, in the diocese of Rc-ccantica, in the same region of Mandelensis, in which it is stated that a subsidy of 580.50 florins was assigned to his parish by the government, although the right to tithe had never existed there. Furthermore, he believes this to be confirmed by the fact that, besides the parish priests, the Bishop and the episcopal seminary of Mandelensis were, in certain places, before the aforementioned decree, subject to the right to tithe, but after the abolition, they were not able to obtain anything from the government in substitution for the lost income. Nor do the canonical coadjutors seem to resort to a more appropriate name by which the subsidy is commonly designated. Indeed, whatever may be the common way of speaking, such a designation has not been used by the decree, nor by the treasury in other matters. Furthermore, the Bishop excludes the asserted substitution, especially considering the nature of the subsidy, which is entirely different from the nature of tithes. "It is established in law," says the Bishop, "that a substituted thing must take on the nature of the thing to which it is substituted." But the right to tithe, existing before the aforementioned decree, pertains...

[*Latin ed. p. 546*]

546. Regarding the parish priest and his canonical coadjutors, the tenure was perpetual and inalienable, without condition, and constituted a part of the benefice; whereas the subsidy, which is said to be substituted for tithes, is variable and conditional; and is dependent on the will of the grantor, who grants it without a certain reason, but under the condition that the lands are present with the royal administration. As for equity, it could be observed that it has the least place when the damage to a third party is involved, as in the present case. It is certainly true that the condition of coadjutors is most miserable; but it is clear that even the archpriest does not enjoy the full benefit of his benefice, after having himself suffered a diminution of revenues due to the laws. However, if the archpriest, whether due to advanced age or to duties assigned to him by the Bishop, is unable to exercise pastoral care with due diligence, it should not be to his detriment. For he dedicates his entire life to the service of the Church and still strives to provide some benefit to the Diocese with his weakened strength. Furthermore, considering the labors of the coadjutors, he has willingly relinquished to them whatever uncertain emoluments the stall may offer. Finally, with regard to the declaration issued by Canon Mazzetti in the matter of the canonical stall, the parish priest observes that there does not, in fact,

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exist any coercion on the part of the Bishop Rossi, as asserted, but rather it is entirely excluded by the character and age of the declarant himself. It is, moreover, established in law that fear is never presumed, but must be conclusively proven by the one alleging it, in order to induce invalidity. Voet, lib. 4, tit. 2, n. 14. Therefore, since, according to leg. i in princ. ff. de pactis, the obligation loses its force as soon as the canonical Mazzetti appears deprived of the right to claim a portion of the subsidy, all the aforementioned considerations must be taken into account. With these premises established, the following question is raised: Whether, in the case of the canonical prebends of St. Sylvester and St. Theodore in the Cathedral, the *summa* is also obtained.

[*Latin ed. p. 547*]

MANUELEN. 547 Whether those who can participate in the assistance granted by the archpriest from the administration are able to do so in this case. And whether, in this case, Canon Mazzetti should be excluded from participating in such assistance.

RESOLUTION. The Sacred Congregation, after deliberation on January 23, 1892, decided to respond: To I, affirmative, in proportion to the tithes. To II, affirmative, by reason of the agreement, for life.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Pensions and benefits which are received from the Government, in place of lost revenues, appear to be substituted in their place.

II. It appears to favor the canonical coadjutors themselves, for if they are considered to have been deprived by civil law, they should be compensated, as partners in labor by a colleague who obtained an increase in revenues through an unjust law; for he who is chosen for a burden should not be repelled from a reward.

III. Canon Mazzetti spontaneously sent a notification regarding this compensation; therefore, there remains no further action for him to take to claim it again; without prejudice to the provision to be made for his successor in the canonry.

CONCERNING THE ERECTION OF THE CATHEDRAL CHAPTER OF COMAGUA.

January 23, 1892.

Through a summary report, the Bishop of Comagua presented the following to the Sacred Congregation: The chapter of this cathedral, from its earliest institution, consisted of five dignities: two canons honorary, and two canons in office; that is, a canon theologian and a canon penitentiary. There were also four beneficed clerics. Either due to a lack of revenues

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and clerics, or due to rare or almost never-occurring political additions, the chapter rarely had the full number of its beneficed members.

SUMMARY OF THE FACTS.

[*Latin ed. p. 548*]

548 OF GOMAIAGÜA. Now, only the Dean remains, who is ninety years old and is absent from the service of the Church due to his age. Since, due to a lack of revenues, the Chapter cannot be restored to its original constitution, it was requested that it be revived, according to the method used among the English, or among the states of North America united by a federation. Thus, the newly revived Chapter will consist of one dignity, that is, the Dean, six canons by grace, and two by office; that is, a theologian and a penitentiary. Five parish priests will be named as canons by grace; the Dean, another canon by grace, and the two by office will be chosen from among the more worthy priests, to whom ecclesiastical benefices with revenues will be conferred at the Cathedral. Canons residing outside the city will be excused from the law of residence, and from daily service. They will attend the choir once a month, on a day determined by the Bishop: who may also summon them for extraordinary matters. On the days when the Chapter attends the choir, it will, each month, discuss spiritual or temporal matters... The Dean, or the senior of those present, presides over the meetings, with the consent of the prelate. The canons residing in the city will attend the services of the Cathedral on Sundays and feast days, and will serve in turn each week. In the month of December of each year, the Chapter, with the consent of the Bishop, will choose from among the canons a secretary, a treasurer, a singer, or a choirmaster, a sacristan, and a master of ceremonies. For the service of the altar, the Chapter will appoint two chaplains, four clerical singers, an organist, and a chapel master. According to a pontifical decree of April 17, 1888, it pertains to the Bishop to elect all the canons, except the Dean. When the Chapter is established, it will draw up statutes, which it will present to the Bishop for approval. In this manner, the revenues of the canons, which come from pious and free offerings of the faithful, are distributed; that is, after deducting the pensions of the chaplains and singers, and also the alms for conventual Masses, the remainder is divided into twelve equal parts; of which two will go to the Dean, and the other ten are divided among the other eight canons.

[*Latin ed. p. 549*]

OF THE COMMA.IÁGUA. §49 A Synopsis of the Arguments. Two principal objections appear to oppose this petition of the Bishop, namely, the erection of a chapter without certain revenues, and the union of canonries "with parochial benefits." It is indeed known, as expressly stated by Car-

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dinal De Luca in *De Beneficiis, Disputationes, 63, number 8*, and in *De Canonici, Disputationes, 32, number 3*, that a canonry cannot be conferred without providing, or at least offering, a common mass in that place, of which neither exists in this case, and therefore a chapter of canons could not be established. Furthermore, as the same Cardinal De Luca observes in *Annotationes ad Concilium Tridentinum, Disputationes, 8, memory 19*, residential or curatial benefices cannot be united with canonries, nor can canons, according to the Tridentine decrees in Chapter 17, Session 25, *De Reformatione*, and other declarations of the Holy See, hold a parochial benefice if they are united with a chapter. Moreover, the examples cited do not seem to favor the petition. Indeed, it appears that in the United States, in the states united by a federation, there are no such colleges of canons, as is evident from Title II, Chapter 2 of the Plenary Council of Baltimore in the year 1884, but their functions are often carried out by removable diocesan consultants, who never perform choral duties, nor enjoy any special remuneration. Those who are said to be canons in England, moreover, lack any distinction, and are merely rectors of missions, and certainly do not hold a parochial benefice together with their position.

WHAT FAVORS THE PETITION. Nevertheless, it should be noted that this concerns a diocese in which the cathedral chapter, according to canonical prescriptions, was established with a theologian and a penitentiary, and in which, therefore, the lack of these is particularly felt in the service of the Church, even by the people. Therefore, since no better means is available to provide for this, the Bishop's proposal might seem worthy of approval in the present circumstances. Furthermore, whatever may be the case with the examples cited, it would not be entirely unusual for a parochial office in some church not...

WHAT OPPOSES THE PETITION.

[*Latin ed. p. 550*]

550 Concerning GOMAIAGÜA, if it is united to a dignity or to a cathedral canonry, it should be so. Thus, for example, the prior, the prelate, and the archpriest of the cathedral of Cuneo administer the parish, which is separated from the chapter's income, within that same city. Those statutes which are found in law concerning the union of benefices, besides affecting the authority of the Bishops, are not universally applicable, and in some cases would scarcely affect the nature of the benefice in the distribution of alms to the canons. When these matters were observed, it was asked how the prayers of the Bishop's advocate should be dismissed. RESOLUTION. The Holy Office, having knowledge of the matter, on January 23, 1892, decided to respond: One should petition the Holy See, considering the particular circumstances, and if those circumstances persist, for the grace

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of reforming the chapter according to the request, but in such a way that the official canons, as far as possible, are chosen by competition, and that five canons may be chosen by grace from among the neighboring parish priests.

EX 3. CONGREG. EPISC. ET REG. -v- DERTUSEN. NULLITY OF SENTENCES. A noble and pious woman, Magdalena de G-ran y de Gras, residing in Barcelona, in Hispania, in order to offer a lasting pledge of benevolence towards the Discalced Carmelites, decided to donate certain properties to four priests, among whom was Henricus di Osso, by means of a deed of donation which did not expressly state the purpose, so that a part of these properties should be used to build a monastery for the reception of the Discalced Carmelites, while the remaining part should serve for ornamentation.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 551*]

DERTUSEN. 551 And indeed, that which he had decided was brought to completion through a public instrument executed on March 30, 1876. Upon this being accomplished, he sought permission from the Royal Government; and having obtained it, without any delay, work on the construction of the building commenced. Hardly had the building been completed when several of the Carmelites residing in the convent of Caesaraugusta were summoned, who, without any delay, acquired possession of the new building and the adjacent properties on October 12, 1877. A few months after acquiring possession, it occurred to the priest, Di Osso, to build a college for nuns, called the College of St. Teresa of Jesus, and he completed the work, much to the astonishment of the Carmelites. The Carmelites, deeply aggrieved by this, approached the General Vicar, requesting that he defend the rights which belonged to them concerning the property donated by the pious woman, Magdalena, and usurped by the priest, Di Osso. The matter was, by common consent of the parties, presented to the aforementioned General Vicar, who, after a careful examination, on March 15, 1881, issued a decree favorable to the Carmelites, ordering that the College be demolished within three years, and that the land be left in the state in which it was previously found. This decree of the General Vicar did not please the priest, Di Osso, who, for this reason, initiated a formal judgment of nullity before the ecclesiastical court of Dertusen, requesting that it be declared that the property occupied by the College did not belong to the Carmelites, but to himself; that the Carmelites and those who had ceded the property should be condemned to pay expenses, whenever they dared to disturb his possession or claim it for themselves; or, alternatively, that the priest, Di Osso, should not be required to demolish the building until

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all expenses, both for the building and for the legal proceedings, had been paid. However, even in this instance, fortune did not favor him; for the General Vicar, on May 23, 1885, acquitted the Carmelites and the assignees, and ruled that the priest, Di Osso, was not to be compensated for any expenses or damages incurred.

[*Latin ed. p. 552*]

552 DERTUSEN. Because they intervened regarding the demolition of the building, they were obligated to bear all the expenses. However, not broken by such an adverse judgment, he appealed to the metropolitan tribunal. But the outcome was, in every way, extremely unfavorable. For the metropolitan tribunal, in a judgment delivered on October 21, 1886, acquitted the Carmelites, and furthermore declared that the College of the Reverend Father di Osso had been demolished; however, it ruled that the expenses incurred for the construction of the College were to be paid by the Reverend Father di Osso himself, as well as by other contractors. From this judgment of the metropolitan tribunal, he also appealed to the supreme tribunal, the Rota; but to no avail. Indeed, the judges of the first section, after considering the report of the fiscal advocate, on March 15, 1889, confirmed the decree of the metropolitan tribunal in all respects. Defeated but not broken, the Reverend Father di Osso appealed to the judges of the second section of the same supreme tribunal, the Rota, hoping for a better outcome. But his hope was dashed. For the judges declared the judgment of the first section, insofar as it concerned the demolition of the College against the Reverend Father di Osso, to be valid and enforceable. However, with regard to the expenses incurred for the construction of the College, they amended the last two judgments, deciding that these were to be paid by the Reverend Father di Osso alone. Furthermore, they ruled that the nuns of Saint Theresa and any others had the right to recover these expenses from the Reverend Father di Osso. With matters standing thus, the Reverend Father di Osso, on April 19, 1891, approached the Most Holy Prince, presenting a supplication, imploring that the aforementioned judgments be declared null and void and devoid of any validity, or, if that were not possible, that the Supreme Pontiff, exercising the fullness of his power, impose a just settlement upon the parties.

SYNOPTIC SUMMARY OF WHAT APPEARS TO BE DUE TO THE REVEREND FATHER DI OSSO. Regarding the first question, the Reverend Father di Osso noted the law of the Church.

[*Latin ed. p. 553*]

DERTUSEN. §53. He asserts that no opinions should be abandoned which are supported by false facts. Furthermore, he states that there is no reason to doubt that the opinions, issued by various tribunals in Hispaniae concerning the matter, are based on falsehoods, if one were to examine

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only those opinions themselves. Indeed, he says that in such opinions it is stated with certainty that Magdalenam de Gran y de Gras gave her property, located in the municipal district of the city of Dertusen, called "Jesús," to five priests, so that a monastery of the Discalced Carmelites might be established there. It is also stated with certainty that the priest of Osso, called the "College of St. Theresa," built a building near the Carmelite monastery, and that this was done without the consent of the Carmelites or their assignees, without having obtained permission from the Bishop or the Holy See, and that, indeed, it led to the frustration of the pious donor's will. Moreover, the priest of Osso asserts that it has been proven that the aforementioned Magdalenam ceded the aforementioned property absolutely to him, without any conditions, so that a building might be erected there for the fostering of religion and piety. It is also asserted that the assignees, in good faith, established that, in addition to the monastery of the Discalced Carmelites, a college for nuns, called the "College of St. Theresa," should also be built there. Finally, it is asserted that the Holy See approved the new college; and therefore, a portion of the property was assigned for the construction of the college, for the purpose that the nuns of St. Theresa might assist the poor and dedicate themselves to the instruction of girls, as civil and ecclesiastical laws in Hispaniae prescribe. And he adds that this is so true that not only the assignees, but also the Carmelite nuns, and even the episcopal curia, welcomed the new building with approval, and that they joyfully received the Religious of St. Theresa when they were admitted to the possession of the college. From all of these things, it becomes clearly evident that the opinions issued by the tribunals of Hispaniae are based on false facts.

[*Latin ed. p. 554*]

In the matter of DERTUSEN, while those who are laboring strive for a resolution, the priest of Osso concludes that no concessions whatsoever should be made, lest they be deprived of any firm foundation. He argues that the settled matter, judged definitively by three concurring sentences, should not be an impediment to the prayers of the priest of Osso being heard. However, he observes that the settled matter cannot be admitted in this case for the following reasons:

1. Because no sentences ever pass into a settled matter, when the nullity, as in this case, arises from an error or a false cause. Reiffenst, *Liber II decretalium*, title XXVII, on sentence and settled matter, § V, number 130: "When the judge proceeded from an error or a false cause, and expressed that cause in the sentence, such a sentence does not pass into a settled matter, but the truth being discovered, it can always be retracted; arg. I. 1. ff. which sentences, without appeal, are rescinded."

2. Because these three sentences do not demonstrate the uniformity of judgment from which a settled matter should arise. Indeed, it is evident

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that the sentence of the tribunal of Dertusen, dated May 23, 1885, was different from the sentence that the tribunal of Tarragona rendered on October 21, 1886, concerning the payment of expenses and damages.

3. Finally, because the uniformity of the three sentences was obtained by deceit, since the Archbishop of Tarragona, before publishing a sentence unfavorable to the Carmelites, suppressed the sentence and replaced the Vicar General Gran with another judge, who, in order to please the Archbishop, rendered a different sentence, without subjecting the matter to examination.

Nevertheless, the priest of Osso, acknowledging the limited acceptance of the uniformity of the three sentences and, therefore, the existence of the settled matter, urges that, with the execution of these sentences suspended, the Most Holy Prince, exercising the fullness of his power, should put an end to the controversy, instructing the parties to settle the matter in a good and equitable manner.

The reasons that, according to the priest of Osso, seem to warrant such a settlement are as follows:

1. The scandal that would be aroused among the faithful due to the demolition of the college, which was extracted at such great expense.

2. The damage that would be caused to so many young girls who were educated in the aforementioned institution.

[*Latin ed. p. 555*]

DERTUSEN. The College receives a wholesome education, both civil and religious: 3. The difficulty lies in carrying out the prescribed demolition of the College and in assigning a suitable indemnity to the nuns of St. Theresa, to whom the property of the building belongs: 4. There is bad faith on the part of both the Carmelite nuns and the Concessionaires, who, while initially permitting the construction of the college, now demand its demolition, under the pretext that it was built by the priest, Di Osso, on land that was not his own, and against the will of the rightful owners. Based on these and other less important reasons, the priest, Di Osso, concludes by requesting that the aforementioned sentences be revoked, or, if that is not possible, that the requested settlement be granted.

WHAT FAVORS THE CARMELITE NUNS. On the other hand, the Carmelite nuns vigorously maintain that the disputed sentences should be enforced, as they are in accordance with both fact and law. They argue that this is evident from the fact that all are in agreement in attributing the ownership of the entire property, which Magdalena de Gran had donated, to the Carmelites. Furthermore, they assert that Magdalena de Gran indeed ceded the ownership of the aforementioned property to the Carmelites, based on irrefutable documents, and especially from the royal decree of June 21, 1876, in which it is stated that the King accepted

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the requests of Magdalena de Gran and granted her consent to erect a Carmelite monastery in the town of Jesus. They also cite the requests that Magdalena herself presented to the Bishop of Dertusen on April 27, 1877, in which she requested that the Bishop deign to erect a building, intended for the reception of barefooted Carmelites, into a monastery, in accordance with the discipline of the Church. Finally, they adduce from Magdalena's own letter, dated June 26, 1891, sent to the Carmelite nuns, in which Magdalena explicitly declares that the land on which the priest, Di Osso, had built the College belonged to the Carmelites, because she had given it to them as a gift.

[*Latin ed. p. 556*]

DERTUSEN. However, it is necessary that the aforementioned judgments be in conformity not only with fact, but also with law. Indeed, it is clear to no one that he who has built upon another's land with his own materials must lose the building according to the censure of civil law. "Conversely, if anyone has built upon another's land with his own materials, the building belongs to him whose land it is; and if he knows that the land is another's, it is understood that he has relinquished ownership of the materials by his own will." L. 7, ff. 12 de acquisitione rerum dominicarum. Moreover, he cannot demand the price of the materials and the wages of the laborers who have built upon another's land knowingly and in bad faith: "Certainly, if the owner of the land demands the building, and does not pay the price of the materials and the wages of the laborers, he can be repelled by the exception of bad faith; namely, if the one who built does not know that the land is another's, and has built upon it in good faith as if it were his own; for if he knows, he can be blamed for having built recklessly upon land that he knew to be another's." Ibid. Furthermore, it is not at all doubtful that the priest of Osso knowingly, and therefore in bad faith, built upon the land of the Carmelites; since, just as with other tenants, it was known to him that Magdalen had donated the entire property to the Carmelites, even though there was no mention of this in the instrument of donation for just reasons. Therefore, since it is clear from what has been stated that the aforementioned judgments were in conformity not only with fact, but also with law, it follows spontaneously that they were just and valid, and therefore should be enforced. However, the priest of Osso argues, absurdly, that the cited judgments were null; nevertheless, they maintain that they cannot be revoked, because the exception of *res judicata* would apply. For it is a common principle of law that disputes are ended by a matter already judged. L. 1, ff. 4 de liberis exhibendis; I. Separatus 3, ff. de pignore et hypotheca; I. ingenuum 27, ff. de statu hominum; arg. quod si nolit, § in factum 13, ff. de aedilit. edict. With which Reiffenstuel agrees in lib. 2 Decret., tit. 27 de sententia, § 4, no.

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106, where he says...

[*Latin ed. p. 557*]

DERTUSEN, 557, states: "That judgment which passes into a matter already decided has such authority that it can make something non-existent become existent, and falsehood become truth, and white become black." Elsewhere, he adds that the judgment which has passed "into a matter already decided cannot afterwards be retracted, and, even if it wishes to contradict itself, it will no longer be heard." *Loc. cit.*, no. 109. The priest of Osso, however, contended that such judgments could not be brought to execution, because they are, in some part of lesser importance, discordant with each other. To this objection, Cardinal De Luca responds, who, in discourse 36, no. 55, concerning Judgments, states that it is a matter of law that these judgments must be brought to execution in those parts in which conformity is found. Finally, concerning the other aspect of the question, the Carmelites contend that the requested transaction cannot be granted, either because the reasons of congruity and equity presented by the priest of Osso are devoid of any foundation; or because, through it, the rights acquired by the Carmelite nuns would be violated. Indeed, it is well known in law that the Pontiff does not wish to, and indeed cannot, without fault, violate the rights of a third party. Fagnano, in chapter *Consultationibus de Clericis aegrot.*, no. 50. For he who violates the rights of others is guilty of injustice. *cap. 1, 22 dist.*, and the Glossa there on the verse. "Injustice teaches that the Pontiff cannot legitimately, without reason, take away the right of one, so that he may give it to another." And Cardinal De Luca states that this can only be done for the sake of public utility. *Disc. 2*, nos. 6 and 7, concerning Regulations. With these points noted for both sides, the following questions are to be considered: Are judgments issued by the tribunals of Hispaniae to be invalidated in this case? And, to the extent that the answer is negative, how should the transaction requested by the priest of Osso be granted in this case?

[*Latin ed. p. 558*]

558. DERTUSEN. RESOLUTION. The Holy Congregation of Bishops and Regular Canons, after mature deliberation, decided on March 11, 1892, to respond as follows: To point 1: Negatively, and the sentence of February 28, 1891, must be enforced. To point 2: Negatively in all respects, and furthermore. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. If someone builds on another's land with his own materials, the building belongs to him who owns the land; and if he knows that the land is not his, he is considered to have lost the ownership of the materials by his own will. II. The owner of the land, if he requests the building and does not pay the price of the materials and the wages of the laborers, can, by way of exception for bad faith, reject the claim, if he does not know that

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the building is on his land, and if he has built in good faith, believing it to be on his own property. III. For if he knows, blame can be imputed to him, that he built recklessly on land which he knew to be another's. IV. The force of a res judicata is so great that it puts an end to disputes. V. And that sentence, which has passed into the matter, has such authority that it can make something that is not, to be; and falsehood to be truth, and black to be white. VI. Therefore, it cannot be retracted afterwards, and those who wish to contradict it will not be heard further. VII. The Supreme Pontiff cannot, without sin, injure acquired rights of a third party, unless there is a legitimate reason, which, according to the opinion of Cardinal De Luca, in section 2, paragraphs 6 and 7 concerning public utility regulations, must be deemed to be of public utility.

RAGUSINA. FIRST FESTIVE MASS. The Chapter of the Curate of the Abbey Church of the city commonly called Cuzzola in Dalmatia, presented a petition to the Holy Congregation of Bishops and Regular Canons on December 7, 1889, explaining the following: COMPENDIUM OF THE MATTER.

[*Latin ed. p. 559*]

RAGUSINA: It is stated that the city of Ragusa, founded in the year 1300, was suppressed in the year 1830 and canonically united to the Diocese of Ragusa. From this union, it resulted that the Church, which previously was a cathedral, subsequently became a simple parish. However, not long afterwards, or on February 18, 1843, this simple parish was elevated to the status of a Collegiate Church, and the Chapter, consisting of the archpriest and four curate canons, was solemnly recognized on May 23, 1858. Furthermore, on June 20, 1876, the same Church was elevated to the status of an Abbey, and the archpriest, for the time being, was endowed with pontifical rights, and the privileges thereof were extended by a decree of the Sacred Congregation of the Council on October 28, 1881. The Curate Chapter has maintained all the rights and privileges that the Cathedral Chapter enjoyed from the time of its institution, among which is the right to celebrate the first Mass on Sundays and feast days in the aforementioned Abbey Church, which is considered the parish Mass, and to explain the Gospel. However, it is reported that a few years ago, the Religious of St. Dominic presumed to celebrate the aforementioned first Mass on Sundays and feast days in their own church, to the great detriment of the faithful who attend their church, because during the celebration of such a first Mass, no Sacred Gospel is explained. Therefore, in order to remedy this evil, the Curate Chapter requests that the Sacred Congregation of Bishops and Regulars declare that the right to celebrate the first Mass on Sundays and feast days belongs to the Abbey Church. A Synopsis of the Argument: The Curate Chapter maintains, with all its strength, that the right to celebrate the first Mass on Sundays and feast days belongs to the Abbey Church; and

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this for two reasons, which pertain both to common law and to custom.

WHAT FAVORS THE CHAPTER.

[*Latin ed. p. 560*]

560 RAGUSA. Regarding the common law which applies, the Holy Council of Trent, Chapter VIII, session 22, concerning the Sacrifice of the Mass, instructs pastors of souls: "that frequently, during the celebration of the Mass, or through readings from the Mass itself, they should explain something, and among other things, should declare some mystery of this most holy Sacrifice, especially on Sundays and feast days." The reason why the Fathers of the Council imposed this duty upon parish priests and other pastors of souls is as follows: "lest the sheep of Christ hunger, and lest the little ones ask for bread, and there be no one to break it for them." However, in order that the goal intended by the Fathers of the Council may be achieved, the Chapter observes that the Church has always arranged that sacred functions should not be celebrated at the same time, especially in small places. And it states that this arrangement must be observed even more strictly when it is a question of the explanation of the Holy Gospel. For, if the Mass is celebrated in other churches either shortly before or at the same time that the Holy Gospel is explained in the parish church, an opportunity would be provided so that fewer of the faithful might hear the word of God. How greatly this is to be avoided, no one can deny. Therefore, in order that the aforementioned disposition of the Council of Trent may not be frustrated and rendered useless, the Chapter decrees that it must be prevented that the Religious of the Order of St. Dominic celebrate the first Mass in their church on Sundays or feast days either shortly before, or at the same hour, as the parish Mass is celebrated in the abbatial church; and furthermore, it should be declared that the right to celebrate the first Mass belongs to the abbatial church, and that this is required by the disposition of the aforementioned Chapter VIII of the Council of Trent. It is not within the power of this Chapter to weaken the right of the Chapter, that the aforementioned Religious announce the word of God to the faithful on those days; provided that the Bishop considers this to happen very rarely. But, even if it were to happen frequently; nevertheless, the same Bishop observes that it is most desirable that the faithful attend the abbatial church, because...

[*Latin ed. p. 561*]

In Ragusa, 561, at Mass, besides the reading of the Gospel, or the encyclical letters of the Supreme Pontiff, or the pastoral letters of the diocesan Bishop, or the prescriptions of the Government, or vigils or feasts, and marriage announcements, or other matters which are desired in other churches but are lacking there, are announced. Furthermore, the Chapter maintains,

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according to its established custom from its founding, that it has preserved all ancient privileges and rights which the Cathedral Chapter possessed, among which it states that it has the right to celebrate the first Mass on Sundays and feast days in the abbatial church. This is demonstrated sufficiently by the testimonies of many witnesses and the declarations of the Syndic himself. Given these facts, it is stated that custom has the force of law, provided that it is reasonable and legitimately prescribed. Cap. ult. de Consuet. It is, indeed, impossible to doubt that it is reasonable when it tends to promote spiritual good. However, in order for it to be considered legitimately prescribed, it suffices that it has endured for as long as is required to establish a prescription. Reiffenstuel, lib. 1, decret., tit. 4, § 3, and in the matter of custom against the law, a period of 40 years is sufficient. Devoti, Instit. Canon., lib. 1, cap. 2, § 50. In this case, however, we are not speaking of a custom of 40 years, but of a centennial, indeed, an immemorial custom, since the Chapter asserts that, in addition to other privileges, it has preserved the right to celebrate the first Mass on Sundays and feast days. Therefore, it is clear that an immemorial or centennial custom provides a better title than worldly considerations. De Luca, De Benefic, disc. 32, n. 2 and 4; Bonf. de Iure Fideicom., disp. 114, n. 31; Rota cor. Olivatio, decis. 624, n. 8, and it has such force « that it can supply the place of an expressly granted apostolic privilege, with only the nominal difference that exists between a tacit and an express grant ». Indeed, it can even be alleged presumptively against Acts, Tom. XXIV, fase. CCLXXXV, 36.

[*Latin ed. p. 562*]

562 In Ragusa, the decrees of the Council of Trent, although protected by an invalid decree. ”For,” says Cardinal De Luca in *De Canonibus et Capitulis*, discourse 12, number P, ”it is not a matter of directly invalidating a decree, but of questioning its proper interpretation.” From this, the Chapter argues that the assertion of the Religious is far from the truth; indeed, from the day of the foundation of the monastery, or from the year 1876 to the present, they have constantly celebrated the first Mass on both Sundays and feast days. This is confirmed by the Bishop, who in his letter of information to the Sacred Congregation, states that the Religious of St. Dominic are not favored by the Chapter of the Abbey Church, but rather by the Chapter itself. With these facts and legal considerations established, the Chapter concludes that the Religious of St. Dominic should be prohibited from using, in these recent times, the practice they have introduced of celebrating the first Mass on Sundays and feast days at the same time, or even slightly before, as the parish Mass is celebrated in the abbey church. WHAT APPEARS TO FAVOR THE RELIGIOUS OF ST. DOMINIC. On the other hand, the Religious of St. Dominic maintain that they have the right to celebrate Mass at whatever time they choose; and this is based on certain

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privileges granted to the Religious by the Most Blessed Pope Pius V in his Constitution *Etsi Mendicantium*, § 22, where the following is written: "We also forbid these Ordinaries, and all other persons, to prevent these brothers, whenever they wish, from ringing the bells, even on Sundays or feast days, or at other times of the year, and from celebrating Mass at the time they choose." Furthermore, they argue that § 8 of the same Constitution also grants them the faculty of performing divine services, including celebrating Mass, before the parish priest celebrates in his own church: "Nor are they to be prevented from celebrating Masses and performing divine services of this kind, even on Sundays or feast days, even before the Rector of the Parish Church has celebrated." However, this Constitution has now lost all its force.

[*Latin ed. p. 563*]

RAGUSA 363 - It can be clearly deduced, without a doubt, that they have the right to exercise this right, both from the resolution of the Most Holy Order of Bishops, as can be seen in Turin, September 28, 1742; and from two resolutions of the Sacred Congregation, namely, in the Commentary on Funerals and parochial functions, December 19, 1750, question 8, and in 'Aquense', May 19 and June 9, 1760, where the proposed question was: "Can the Fathers of the Carmelite Order ring the bell and celebrate Mass on holidays at the same time, or before the proper and celebrated parochial Mass is celebrated?" The answer was: "Affirmative." Furthermore, it cannot be argued from the prescription made by the Council of Trent to pastors of souls, that the Word of God should be announced to the people during the celebration of the parochial Mass, that it should be forbidden to Religious to celebrate the Holy Mass in their own churches at the same time, or before the parochial Mass is celebrated in the parish. For, as Benedict XIV wisely observes, in the cited Council of Trent, session 23, which imposed the obligation on pastors to admonish the faithful "to frequently attend their parishes, especially on Sundays and major feasts," it did not intend to compel the faithful, but only to encourage them to attend the parochial church on those days. "For indeed, the people are not to be compelled by a precept, but are to be drawn to it by exhortations." From the Synod, diocese L 11, chapter 14, § 10. However, Religious maintain that this right belongs to them, not only in virtue of the privileges that are proper to their Order, but also in virtue of custom. They state that it has been ascertained that, since the year 1876, they have regularly celebrated the first Mass. They report that if this practice was interrupted in earlier times, it was because the monastery was mostly closed from the year 1806 to 1876, or only one religious resided in it. But since the year 1876, when two religious were sent to reside there permanently, the first Mass has been regularly celebrated in their church, and nothing adverse has been opposed. And from this, so

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long and constant a practice:

[*Latin ed. p. 564*]

§64 It was fitting to argue that silence could be interpreted as an admission, and that the Chapter itself had, in fact, acquiesced to a custom favorable to the Religious. For if it had not been so, it could not be presumed that the Chapter had remained silent for so long. They add that when, in the year 1889, the Capitulars attempted to assert this right for themselves, they did not even then dare to mention the custom that favored them; but rather, they sought to obtain it through amicable means, so that the Religious might validly exercise their right. This fact makes it clear that no custom favorable to the Capitulars had existed previously. However, they vehemently declare that the seven witnesses who testify to the custom favorable to the Chapter are to be considered worthless, because these witnesses offer testimony about a matter that was in use before they themselves were born into this world; which cannot be admitted in any way. Finally, the Religious contend that the celebration of the first Mass in their own church does not cause any harm either to the Chapter or to the faithful of the city of Curzola. Indeed, it does not harm the Chapter, because the faithful who come to the Religious' church to hear the first Mass are not parishioners of the Abbey church, but belong to the parishes of the neighboring towns. These people, when they come to the city of Curzola on feast days to conduct their business, would not go to the Cathedral, nor to any other church, to fulfill their obligation, unless they heard the first Mass that is celebrated in the Religious' church. But neither does it cause harm to the spiritual well-being of the faithful, because in the Religious' church, on all feast days between the celebrations of Mass, the word of God is proclaimed to the people, just as it is customary to do in the Abbey church. Given these circumstances, the Religious conclude that they are justified in maintaining their claim to this right. With these points clarified, the following question is to be considered: Whether the Religious of St. Dominic in the city of Curzola are permitted to celebrate Mass on Sundays and feast days in this case.

[*Latin ed. p. 565*]

RAGUSINA 565 The Sacred Congregation of Bishops and Regulars, having considered the matter, on March 11, 1892, decided to respond: Affirmative. From: THOSE FROM WHOM IT IS GATHERED. I. All Religious are permitted, in accordance with the Constitutions of St. Pius V, even though they are mendicants, to ring the bells, on Sundays or feast days, or at other times of the year, whenever it pleases them, and to celebrate Mass, even at a time when the Ordinary has celebrated. II. They, according to the aforementioned Constitution of St. Pius V, are permitted to celebrate Mass and perform divine services, whenever they deem it appropriate, even on Sundays or feast days, even before the parish priest of the church

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has celebrated. III. It is clear from numerous resolutions of both the Sacred Congregation of Bishops and Regulars and the Sacred Congregation of the Council that such privileges have not lapsed, but still remain in full force. RESOLUTION. RHEDONENSIAN JURISDICTION. To which Bishop do the solemnly dismissed religious with simple vows belong? The Reverend Father E. Garnier, from the Diocese of Rennes (-Dol-Saint-Malo), in a petition presented to the Sacred Congregation of Bishops and Regulars on April 26, recounts that from a young age he left the Diocese of Rennes in order to pursue more humanistic studies elsewhere; that he was then accepted as a novice in the Society of Jesus, where he engaged in philosophical and theological studies; that after completing these studies, he served as a teacher for several years, and that finally, in August of the year 1870, he was ordained a priest by the Most Reverend Bishop Zanquillot, delegate of the same Society for the missions. Furthermore, he states that on September 8, 1879, he said farewell to the Society of Jesus, and from that day on, he has belonged permanently to the secular clergy. However, since he has not been able to obtain any office in the Diocese of Orense, nor testimonial letters, nor even the faculty to celebrate, he appealed to the Holy Sacred Congregation to declare whether the Holy Sacred Congregation's decree of March 6, 1864, could be applied to him, in which the Bishop of Tarvisium was responded to...

[*Latin ed. p. 566*]

566 RHEDONEN. It was asked: Whether a priest of the Institute of Charity, having been granted perpetual secularization, falls under the authority of the Bishop of *originis* (Orense), and whether, therefore, he, having returned from the Society of Jesus, automatically falls under the jurisdiction of the Bishop of *originis*. After these preliminary remarks, the following question was put forward for the judgment of the Most Reverend Fathers: Whether and how the priest Garnier, of the Archbishopric of Rhedonen, is subject to the jurisdiction. The Holy Congregation of Bishops and Regular Canons, after careful consideration, decided on February 27, 1891, to answer the proposed question with: "Affirmatively, as an Ordinary of *originis*."

A Decree of the Holy Congregation concerning Regular Canons, issued with Apostolic authority on June 12, 1858, regarding the rights pertaining to those who have made simple vows, states in paragraph VI: "Those who have made these simple vows shall participate in all the graces and privileges which are legitimately enjoyed by those who have made solemn vows in the aforementioned Order." Furthermore, in paragraph VIII, it is added: "The years of profession, which are required in this Order, in order that one may enjoy active and passive vows, and be admitted to offices, shall be counted from the day of the making of the simple vows."

From this, the following question arises: Whether those who have made

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simple vows, who, according to the aforementioned Decree, are equal to those who have made solemn vows in terms of rights, both of graces and privileges, as well as of active and passive vows, are therefore...

[*Latin ed. p. 567*]

ON THE STATUS OF THOSE WHO HAVE TAKEN VOWS 67. Whether those who have taken solemn vows can be lawfully and validly elected to the rank of Prelate or Superior within the same Order? The Sacred Congregation of Eminent and Reverend Cardinals concerning the Status of Religious, after mature deliberation on the aforementioned matters, has decided to respond as follows: In the negative. Given at Rome, from the Secretariat of the aforementioned Congregation, this sixteenth day of January, 1891. FR. ALOYSIUS, BISHOP OF CALLINICAE, Secretary.

FROM THE SACRED CONGREGATION FOR INDULGENCES: A QUESTION REGARDING THE IMPOSITION OF SCAPULARS. The Rector and Dean of the Church of the Blessed Virgin Mary... in the Diocese of Pictavensis humbly presents the following to this Sacred Congregation: Sometimes, the imposition of approved scapulars is prolonged to such an extent for the benefit of the people that it causes weariness to the attendees and fatigue to the priest, especially after the First Holy Communion of children or after missionary exercises, because then many come to receive these sacred garments; these inconveniences could be avoided if it were permissible for the priest to say the formula only once, in the plural, and to successively impose the scapular upon all the faithful present, without any interruption. This seems permissible, since there is a moral connection between the recitation of the formula and the imposition of the scapular, and thus a single and complete act would be accomplished. Therefore, the aforementioned Rector proposes the following question to be resolved: Whether it is permissible for a priest, after having properly performed all the necessary rites, to say the formula only once, in the plural, "Receive, brothers (or sisters), etc.," and to successively and without interruption impose the scapular upon all those present; or rather, must the formula be repeated in the singular for each individual? The Sacred Congregation for Indulgences and Relics, having considered the proposed question, responds:

[*Latin ed. p. 568*]

568 FROM THE SACRED CONGREGATION FOR INDULGENCES: Affirmative concerning the first part; negative concerning the second, as decreed in the document of UNA VALENTINBNSI, dated 5 February 1841, concerning question 4. Given from the Secretariat of the same Sacred Congregation, on 18 April 1891. I. CARDINAL D'ANNIBALE, Prefect. ARCHBISHOP OF NICOPOLI, Secretary.

QUESTION concerning tertiaries.

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Most Blessed Father,

From time immemorial, indeed from the time of Saint Francis, the custom has prevailed that Bishops, Priests, Nobles, and the laity are admitted privately and individually by Franciscan Priests, or others having the faculty, to the habit and profession of the Secular Third Order of Saint Francis, without belonging to any Congregation. Authors who have written on this matter believe that it is preferable that tertiaries, if they are able, should be enrolled in a Congregation and attend its meetings on designated days, for the spiritual benefits that result; at the same time, they admit that private vestitions and professions are valid, and this opinion is still maintained by the superiors of the Order of Saint Francis.

After the Constitution *Misericors Dei Filius*, some priests of the Archdiocese of Meclina have begun to doubt this matter, and there is a danger that, due to this uncertainty, the zeal for welcoming into the Third Order may gradually diminish, especially among priests who are rarely able to participate in the activities of a Congregation.

Therefore, the following question is proposed to the Sacred Congregation: Is the vestition and profession valid of one who is privately admitted by a priest having the faculty to the Secular Third Order of Saint Francis, without being enrolled in any Congregation?

(The Sacred Congregation for Indulgences and Relics responded:) Affirmative.

14 July 1891.

S. I. CARDINAL D'ANNIBALE, Prefect.

ARCHBISHOP OF NICOPOLI, Secretary.

[*Latin ed. p. 569*]

§69 FROM THE HOLY CONGREGATION FOR RITES OF NAPLES: Decree of Beatification and Canonization of the Venerable Servant of God, Francis Xavier Mary Bianchi, priest, of the Order of Clerics Regular of Saint Paul the Barnabite. CONCERNING THE DOUBT: Whether and concerning which miracles there is sufficient proof in this case, and to the effect of that which is being considered? As the Apostle Paul declared of himself, "For to me, to live is Christ" (Philippians 1:21), so too, the Venerable Francis Xavier Mary Bianchi could truly affirm this of his own life. For he, born in Arpino in the year 1743, having set aside all worldly things and pleasures, sought after those things which are above, and understood them, and desired nothing more than to live a life hidden with Christ in God. Having made his vows in the Order of Clerics Regular of Saint Paul the Barnabite, he strove to follow in the footsteps of this Apostle, living in Christ in all things; and his spirit, with which he was filled, was manifested to many through works of charity towards his neighbors, and no less through the singular example of patience during long and grievous bodily pains, truly imitating Paul, a

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true disciple of Christ. His reputation for holiness was great, and even after his death, which occurred in the seventy-second year of his age, it grew ever greater, accompanied by heavenly wonders. Furthermore, Pope Pius IX, of blessed memory, declared that his theological and cardinal virtues had reached the heroic degree, on March 7th of the year 1857. Then, concerning two miracles obtained through his intercession, proceedings were begun before this Holy Congregation. With regard to this matter, a threefold discussion was held: the first in the preparatory assembly on March 9th, 1882, before the Most Reverend Cardinal Aloysius Billio; the second in the preparatory Congregation in the Vatican Palace on August 12th, 1889; and the third in the general assemblies of the Congregation in the same Vatican buildings on July 16th, 1891, before His Holiness Pope Leo XIII. In these discussions, the Most Reverend Cardinal Lucidus Maria Parocchi, Bishop of Albano Laziale, Relator of the Cause, proposed the doubt: "Whether and concerning which miracles there is sufficient proof in this case, and to the effect of that which is being considered?"

[*Latin ed. p. 570*]

570 DOES THIS CONCERN THE SACRED RITES? The Most Reverend Cardinals and Consultors, each in turn, presented their votes. The Most Holy Pope, adhering to the custom of his predecessors, sought the aid of heavenly light from God, before revealing his judgment on the matter. On this day, which commemorates the Annunciation of the Blessed Virgin Mary, having approached this more noble hall of the Vatican, offering the unbloody Sacrifice, and seated upon the Pontifical throne, he ordered the Most Reverend Cardinals Cajetan Aloisi-Masella, Prefect of the Congregation of Sacred Rites, and the aforementioned Lucida Maria Parocchi, along with the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the Secretary, to be summoned. In their presence, he declared, "It is established that there are two miracles, namely, the instantaneous and perfect healing of Maria Rosa Casabona from a lethal apoplexy; and the instantaneous and perfect healing of Philumena Varazzo from varicose ulcers, from which an eruptive eczema had arisen." This Decree was ordered to be recorded in the acts of the Congregation of Sacred Rites and promulgated on the eighth day before the Kalends of April, in the year 1892. L. % S. CARD. ALOISI MASELLA, Prefect of the Sacred Rites. VINCENZO NUSSİ, Secretary of the Sacred Rites. MURANA, or COMPSANA. Decree concerning the Beatification and Canonization of the Venerable Servant of God, Father Gerard Maiella, a lay member of the Congregation of the Most Holy Redeemer. CONCERNING THE DOUBT: Regarding which miracles are in question? It is established in the case, and to effect, that the Divine promise of Jesus Christ is fulfilled, "He who remains in me, and I in him, shall bear much fruit" (John 15:5), which has been clearly fulfilled in all times in the lives of the Saints, and is confirmed and evident in the Venera-

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ble Gerard Maiella of the Congregation of the Most Holy Redeemer. Born in Lucania in the year 1726, having been entirely devoted to Christ from childhood, and as a young man, engaged in the art of...

[*Latin ed. p. 571*]

Having, in his priestly duties, become closely united, he remained perfectly and completely devoted to the Liguorian discipline; and although his life spanned scarcely thirty years, he brought forth many and most joyful fruits of all virtues. The brilliance of these virtues, especially humility and patience in enduring [suffering], following the example of Jesus Christ, bursting forth from the depths of his soul, captivated all, so that they considered him to be an instrument chosen by God, through whom his goodness and glory might shine forth more brightly. The fame of his sanctity, already widely spread, increased even more after his death, with flourishing heavenly wonders; and these heroic virtues were so clearly demonstrated that Pope Pius IX, of blessed memory, solemnly declared it by decree on the sixth day before the Ides of June in the year 1872. Regarding the four miracles which were said to have been performed through his intercession, a threefold examination was held before this Sacred Congregation; the first, on the twelfth day before the Kalends of December in the year 1888, in the house of the Most Reverend Cardinal Miecislaus Ledóchowski, Relator of the Cause; the second, on the sixth day before the Ides of March in the year 1891, in the Vatican Palace; the third, on the sixth day before the Kalends of February of this year, before His Most Holy Lordship Pope Leo XIII in the general Congregation, in which, when the aforementioned Relator of the Cause proposed the question, "Whether and concerning which miracles there is proof in this case, and to what effect they pertain?", the Most Reverend Cardinals and Consultors gave their individual votes. However, His Most Holy Lordship did not immediately express his judgment, but encouraged that heavenly counsel be sought through prayer, in this matter of such great importance. Today, on the feast of the Annunciation of the Blessed Virgin Mary, the divine Host being offered, approaching this more noble hall of the Vatican, and seated in the Pontifical throne, he addressed the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and the esteemed Miecislaus Ledóchowski, and the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, declared: "There is proof of four miracles, namely, the first – the instantaneous and perfect healing of Anna Maria Theresia Deheneffe from an old, fistulous wound, without leaving any scar; the second – the instantaneous and perfect healing of Laurentius Riola from a severe mesenteric tuberculosis; the third – the instantaneous and perfect healing of Ursula Solito from a cancerous tumor; the fourth – the instantaneous and perfect healing of Joseph Santorelli from

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a severe ileo-typhus."

[*Latin ed. p. 572*]

572 FROM THE SACRED RITUALS. This Decree was ordered to be referred to and promulgated in the acts of the Congregation of Sacred Rites on the eighth day before the Kalends of April, in the year 1892. L. * S. C. CARD. ALOISI MASELLA, Prefect of the Sacred Rites. VING. NUSSI, Secretary of the Sacred Rites. ROMA. Decree concerning the Beatification and Canonization of the Venerable Servant of God, Father Anthony Baldinucci, a priest of the Society of Jesus. CONCERNING THE DOUBT: Whether and concerning which miracles it is fitting, in the case and to the effect of which we are speaking, that the Venerable Anthony Baldinucci, born in Florencia in the year 1665 and, as a young man, admitted into the Society of Jesus, having taken up the pennon as an eagle, flew and did not fail, already happily foreshadowing an apostolic life: for he excelled in all the praises of virtue which are proper to his office, especially in his zeal for the glory of God and his charity towards the erring and the sinners. Then, truly, like a soldier entering the ranks and the conflict, he surpassed all expectations: for, not indulging himself, even in a weak body, he strove with the greatest labors to enrich souls with Christ. He accomplished this with such constant perseverance throughout the Roman province, and brought forth such salutary and abundant fruits, that he was called an apostle of his time: and he is worthy of such a name, because he himself, during sacred expeditions, most piously passed away in the year 1717. The fame of his sanctity, with which he had been adorned in life, was increased and illuminated by miracles, wrought by God himself, even as he implored them; and the Supreme Pontiff Pius IX, recognizing his heroic virtues, solemnly decreed his beatification on the eighth day before the Kalends of January, in the year 1874. Then, a discussion began concerning three miracles which were said to have been wrought by God to demonstrate the sanctity of his faithful servant. Concerning this matter, a threefold inquiry was held: the first, by the Most Reverend Cardinal Raphael Monaco of Valletta, in the Cause of...

[*Latin ed. p. 573*]

From the Sacred Rituals, 573, dated the 14th of February, in the year 1882; the second, on the 14th of January, in the Vatican buildings, in the year 1890; the third, on the 1st of December, in the year 1891, before His Most Holy Lord Pope Leo XIII, in the same Vatican Palace, in the General Congregation of Sacred Rituals, in which, after the Most Reverend Cardinal had proposed the question, "Concerning which miracles does it consist, in the case and for the effect of which we are considering this matter?", the Most Reverend Cardinals and Consultor Fathers each gave their vote. His Most Holy Lord, considering that in a matter of such importance, only with

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divine help, obtained through prayer, could something be decided by Him, postponed giving His judgment. But on this day, on which the Word took flesh from the Blessed Virgin, having offered the sacrifice of praise, entering this more noble hall of the Vatican, and sitting on the Pontifical throne, He summoned the Most Reverend Cardinals Caietan Aloisi-Masella, Prefect of the Congregation of Sacred Rituals, and the aforementioned Raphael Monaco La Valletta, Bishop of Ostia and Velletri, together with the Reverend Father Augustine Capra, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, He declared: "It is established that there are two miracles, namely, the first – the instantaneous and perfect healing of Rosalinda Fontani from chronic entero-colitis; the second – the instantaneous and perfect healing of Sijano Thomas of Bossi from a malignant fever, while lying in the agony of death." This Decree was ordered to be recorded in the acts of the Congregation of Sacred Rituals and promulgated on the 28th of March, in the year 1890. C. Card. ALOISI-MASELLA, Prefect of the Sacred Rituals. L. S. VINCENTIUS NUSSI, Secretary of the Sacred Rituals. FROM THE SACRED CONGREGATION OF THE HOLY OFFICE, DECREE concerning emblems of the Most Holy Heart of Jesus to be placed in the Eucharist. Thursday, the 3rd of June, 1991. New emblems of the Most Sacred Heart of Jesus in the Eucharist are not to be approved by the Apostolic See. To foster faith...

[*Latin ed. p. 574*]

57-4 FROM THE SACRED CONGREGATION: It has been judged sufficient that images of the Most Holy Heart are already in common use and approved in the Church; because the worship offered to the Most Holy Heart of Jesus in the Eucharist is not more perfect than the worship offered to the Eucharist itself, nor is it distinct from the worship offered to the Most Holy Heart of Jesus. Furthermore, the same Most Eminent Fathers have ordered that the opinion be communicated, which from this Holy Congregation, by order of Pope Pius IX, of blessed memory, was expressed on the fourth day of the week, January 13, 1875, namely, that certain authors, and others of that kind, should cease from sharpening their minds on these and other similar arguments, which seem to introduce novelty, and who, under the guise of piety, seek to promote unfamiliar forms of worship even through periodicals, so that they may abandon their purpose, and understand the danger that lies in leading the faithful into error, even concerning dogmas of the faith, and in giving an opportunity to the enemies of religion to undermine the purity of Catholic doctrine and true piety (1). R. CARD. MONACO.

Concerning the validity of marriage, in the case where the baptism of one of the spouses is doubtful.

"Most Illustrious and Reverend Lord,

By letters dated April 18 of the current year, the Vicar Capitular

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requested that the Holy See declare, for the sake of the peace and salvation of souls, that if doubt about the baptism of the heretical party persists, as is not uncommon in those religions, a dispensation regarding the impediment of mixed religion should also be understood to be granted, for caution's sake, regarding the impediment of disparity of cult.

This matter was brought before this Supreme Congregation, which, after approval by the Holy Father, has ordered that the following decrees be communicated to you as a norm:

1. Regarding the proposed doubt: Whether Calvinists and Lutherans, whose baptism is doubtful and suspect, should be considered infidels, so that, between them and Catholics, the impediment of disparity of cult should be considered to be removed?

On the fourth day of the week, November 17, 1830, the response was: "Regarding heretics, whose sects prescribe the collation of baptism without the necessary use of the essential matter and form, the particular case must be examined; regarding others, who, according to their rituals, baptize validly, the baptism should be considered valid. And if doubt persists, even in this case, the baptism should be considered valid in order to the validity of marriage; but if it is certainly known that there is no baptism according to the actual custom of that sect, then there is no marriage."

2. Regarding the proposed doubt: Whether, if doubt about the validity of baptism remains, and it is not deemed appropriate to resolve the doubt concerning those who have been baptized in such a doubtful manner, in matters pertaining to marriage... (1) The warning, which is recalled in this case, has already been reported in Vol. VIII, 269.

[*Latin ed. p. 575*]

From the Sacred Congregation of the Inquisition, 575, concerning whether those who are considered to have been baptized, are indeed truly and validly baptized? On Thursday, September 9, 1868, the response was: "It is to be considered that baptism is valid in relation to the validity of marriage." Rome, September 18, 1890. "R. CARD. MONACO."

From the Sacred Congregation for the Index, a Decree by which several books are prohibited. On Friday, April 7, 1892. The Sacred Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, having considered in the Apostolic Palace at the Vatican on April 7, 1892, the matter of books of false doctrine, and their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, has ordered and commands that the following works be included in the Index of Prohibited Books:

Conte Luigi Pianciani. — *La Roma dei Papi illustrata.* — E. Perino Editore. — Rome.

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Les erreurs scientifiques de la Bible. By Emile Ferrière. — Paris. Ancienne Librairie Germer Baillière et Cie, Félix Alean Éditeur. Boulevard Saint-Germain, 108. — 1891.

Les Apôtres, Essai d'Histoire religieuse d'après la méthode des sciences naturelles. By Emile Ferrière. — Paris. Librairie Germer Baillière et Cie, Boulevard Saint-Germain, 108. — 1879.

Paganisme des Hébreux jusqu'à la captivité de Babylone. By Emile Ferrière. — Paris. Ancienne Librairie Germer Baillière et Cie, Félix Alean Éditeur. Boulevard Saint-Germain, 108. — 1884.

L'âme est la fonction du Cerveau. Volume first — Volume second. By Emile Ferrière. — Paris. Ancienne Librairie Germer Baillière et Cie, Boulevard Saint-Germain, 108. — 1883.

La matière et l'énergie. By Emile Ferrière. — Paris. Ancienne Librairie Germer Baillière et Cie, Félix Alean Éditeur, Boulevard Saint-Germain, 108. — 1887.

La oie et l'urne. By Emile Ferrière. — Paris. Ancienne Librairie Germer Baillière et Cie, Félix Alean Éditeur. Boulevard Saint-Germain, 108. — 1888.

[*Latin ed. p. 576*]

576 FROM THE SACRED CONGREGATION'S INDEX: Emile Ferrière. — Darwinism. — Paris. Former Bookstore Germer Baillière and Company, Félix Alean, Publisher, Boulevard Saint-Germain, 108. Catholicism and Spiritism. By J. Jesupret fils — Paris, at the Bookstore of Psychological Sciences, rue Chabaud. 1. — 1891. Additions. — The Dominators of the Cluse. — Venice, Typography of Ancora, I. Merlo, Publisher, 1891. Decree of the Sacred Office, on the fourth day of March, 1891. — The Author (Domenico Penzo) commendably submitted himself and disapproved of the work. Regarding a Pastoral Letter from the Bishop against the monument to Rosmini: Historical Observations. — Milan, Typography L. F. Cagliati, 1889. Decree of the same. — The Author (Domenico Penzo) commendably submitted himself and disapproved of the work. The Reform of the Clergy according to the Council of Trent, by the Reverend Virginio Marchese, Canon and Provost of Cardé in the diocese of Saluzzo. Turin, 1884. Decree of the same. Defense of the book: The Reform of the Clergy according to the Council of Trent, by the Reverend Virginio Marchese, Canon and Provost of Cardé in the diocese of Saluzzo. Turin, 1884. Decree of the same. The Conversion of Protestants through the Council of Trent, by the Reverend Virginio Marchese, Canon and Provost of Cardé in the diocese of Saluzzo. Turin, 1885. Decree of the same. The Catholic Diaconate and the Social Question, by the Reverend Virginio Marchese, Canon and Provost of Cardé in the diocese of Saluzzo. Turin, 1891. Decree of the same. Ruggero Bonghi: The Life of Jesus Christ, illustrated by 86 artistic drawings. — Decree of the Sacred Office, on

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the fourth day of March, 1892. Therefore, no one of whatever rank and condition may dare to publish, or after publication to read or retain, the aforementioned works, but must deliver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These things, having been related to Me, the undersigned, Secretis of the Sacred Congregation, were approved by HIS HOLINESS POPE LEO XIII, and He commanded that they be promulgated. In whose faith, etc. Given in Rome, on the 7th of April, 1892. The Author of the work, Les Congrégations Romaines, a historical and practical guide by Félix Grimaldi, Sienne, Imprimerie San Bernardino, 1890, commendably submitted himself and disapproved of the work, as decreed by the Sacred Office on the fourth day of April, 1891.

CAPPELLUS Cardinal Miazza.

Prefect: Fr. Hyacinth Frati, O.P., Secretis.

[*Latin ed. p. 577*]

S77 FROM THE HOLY CONGREGATION CONCERNED WITH THE CHURCHES OF SPAIN AND THE ISLAND OF CUBA, dated March 5, 1892. SUMMARY OF THE CASE. A most serious and difficult dispute has arisen, originating from a matter that, in itself, is quite trivial. The matter concerns a conflict of jurisdictions, between the Tribunal of Madrid and the Bishops of Cuba. The Bishop of Havana is striving to defend what he presumes to be his rights, along with his own, and, together with him, the Archbishop of Saint James of Cuba, is appealing to the Holy See, stating: "That those Cardinals to whom this matter is entrusted, may, in a manner more consonant with justice, either through the means of an appeal, or an exception, or a complaint, be made aware of my opposition to the proceedings of the Tribunal, which, in my judgment, are pre-canonical." The origin and progress of this controversy are as follows: A certain chaplain of Castrum, Joachim Salvadores and Botas, who was stationed with soldiers residing in the city of Saint Christopher of Havana, refused, despite being ordered by the Subdelegate of Castrum and invited by the parish priest and military tribune, to attend the marriage of a certain centurion, which was being celebrated before the parish priest of the bride; and he remained in the sacristy, during the celebration. Upon hearing of this disobedience, in which a certain irreverence towards the military leaders could rightly be suspected, the Subdelegate of Castrum, Don Urreta, who also held the office of Vicar General of the Bishop, "without observing the proper legal form, but considering the truth of the matter," ordered the chaplain to perform ten days of penance; to which command, the aforementioned Chaplain Salvadores refused, appealing to the Tribunal of Madrid. The Tribunal, for its part, accepted the appeal, and, rejecting the "exception of incompetence" raised by Urreta, declared itself competent, and, after considering all the proceedings, rendered a judgment in 1884, revoking

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the decree of Don Urreta, and furthermore, imposing a fine on him for all expenses! Later, the same Tribunal rejected a new appeal from Urreta, with a final judgment on May 16, 1887. Records, Volume XXIV, page CCLXXXVI, 37.

[*Latin ed. p. 578*]

578 OF SPAIN, ETC. Indeed, when the execution of this sentence was referred to the Archbishop of St. James of Cuba, in which city Urreta resided; for he had already left his position as a canon and doctor of the Chapter of St. James, Havana, where he had previously lived: the Archbishop considered that the sentence of the Rota was an infringement upon the privileged discipline concerning appeals, which had been introduced by Gregory XIII at the request of the King of Spain in the overseas regions of that kingdom, and which was still in full force; and therefore, he opposed the execution of the Rota's sentence and appealed to the Holy See, "using his own words," that the Most Holy [See] would order that the cognizance, decision, and execution of the case brought against the priest "Salvadores" and against Mr. Urreta be restored to this Metropolitan See, and to the Episcopal Sees of this ecclesiastical province.

In the meantime, as is narrated in the supplement, another process, connected with this one, was brought by Salvadores before the Rota against the Subdelegation of Havana, that is, against the Bishop of that diocese. The Rota granted the petitioner's request and wrote to the Bishop, requesting information regarding those things which, according to the right he claimed, would be favorable. The Bishop responded: "According to the Constitution promulgated by Gregory XIII and law X, title IX, book I of the Collection of Indias, all causes of the ecclesiastical forum must be concluded within the same ecclesiastical province where they originated, and all actions contrary to this Bull are invalid and of no force."

To this communication made by the Bishop to the Most Reverend Nuncio, no response was given, except that, at the urging of Salvadores, to which the Fiscal of the Rota agreed, that tribunal issued another decree against the Bishop, without his hearing or knowledge, and condemned him to pay half of the expenses, that is, 1535 reales; and the Rota considered this sentence "as final and binding," threatening the Bishop with a criminal action, unless, within ten days from notification, he would acquiesce, a mandate for execution having already been issued by the tribunal. Therefore, the Bishop of Havana also appealed to the Holy See against the Rota, as mentioned above.

A SYNOPTIC ACCOUNT OF THE DISPUTE:

From all of this, it is clear that, while the Rota of Madrid considers that it has the right to receive and conclude any causes of the ecclesiastical forum

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in appeals, the Bishops of Cuba and Havana, with regard to the overseas regions,

[*Latin ed. p. 579*]

SPAIN, ETC. §79. They deny that [jurisdiction] applies, whether it concerns ordinary episcopal jurisdiction, or the military jurisdiction, for which these Bishops are always delegated by the Major Chaplain, who is usually the Patriarch of India. Therefore, the entire controversy revolves around certain privileged jurisdictions, which do not follow the usual procedures of common law; therefore, it is necessary to carefully examine such privileges, so that it may be determined what rights are held by virtue of each concession. And in this regard, three things in particular, says the Consultant, must be considered: 1. The ordinary but privileged jurisdiction in the overseas regions of Spain, created by Gregory XIII. 2. The military jurisdiction for all soldiers of that kingdom. 3. The jurisdiction of the Roman Rota of Madrid. The privileged overseas jurisdiction. A.D. 1578. Pope Gregory XIII issued the Bull "Exposcit debitum," at the request of King Philip II the Catholic, for the overseas regions of Spain. The King had explained that "in certain parts of the kingdoms, lands, places, towns, and territories of India, of the firm land and the islands of the Ocean Sea, due to the distance from the Roman Curia, it is very difficult to obtain a true Apostolic rescript, and therefore, appeals, which are interposed from any judgments rendered in cases, whether criminal or civil, or concerning any other matter pertaining to the ecclesiastical forum, are very difficult to receive and admit, and therefore, it would be very beneficial for the inhabitants of the aforementioned regions if two judgments rendered in due time would make the matter judicially settled, and it would no longer be permissible to appeal." The Pope, after the usual dispensations and absolutions, proceeds to satisfy the King's request in the following manner: "We wish and, by our Apostolic authority, We decree that in all kingdoms, lands, and territories of India, and of the firm land and the islands of the Ocean Sea, and in all other places and regions, now called by whatever name, which are subject, mediately or immediately, to the aforementioned Philip, the King, whenever it should happen that, in cases concerning both criminal and other matters pertaining to the ecclesiastical forum, appeals are interposed from judgments rendered in due time, if the first judgment has been rendered by a Bishop, an appeal shall be made to the Metropolitan; and if the judgment has been rendered by the Metropolitan himself, an appeal shall be made to the nearest ordinary suffragan."

[*Latin ed. p. 580*]

580 OF THE SPANISH ETC. courts, it shall obtain the force of a final judgment, and execution thereof shall be granted to him who issued it, whatever his designation may be. However, if the two judgments, whether

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issued by the Ordinary and Metropolitan, or by the Metropolitan and Ordinary, are not in agreement, then an appeal shall be made to the other Metropolitan or Bishop from whom the first judgment was issued, who is nearest to the same Province, and two out of the three judgments, which we also wish to have the force of a final judgment, shall be followed by the one who rendered the final judgment, whatever his designation may be. We declare that all and each judgments attempted in any other manner than that which is prescribed above shall be entirely devoid of validity or weight, and that any appeals interposed or to be interposed, if the aforementioned procedure is not followed, shall be null, void, and of no effect, and that, through any judges and commissioners, exercising any authority, even ordinary judges and auditors of the Apostolic Palace, such judgments must be rendered null and void, if, concerning these matters, anything should happen to be attempted by anyone, with any authority, knowingly or unknowingly, in a different manner. Concerning the privileged jurisdiction in the aforementioned regions! Furthermore, from the allegations presented in the case, it is abundantly clear that the procedure for appeals introduced by this Bull has been consistently observed in cases pertaining to the ecclesiastical forum, so that, speaking in the terms of modern civil legislation, it can truly be called a Code of civil and criminal procedure. If this designation is accepted as true, I believe it will contribute significantly to the resolution of the question proposed. The Castrum jurisdiction for the Kingdom of Spain. This privileged jurisdiction is contained and strengthened by several apostolic constitutions, beginning with that of Innocent X, "Cum sicut," dated September 6, 1644; which constitution is notably expanded in another of Clement XII, dated February 4, 1736, "Quoniam in Exercitibus," and in another of the same, dated March 10, 1762, "Quoniam in exercitibus," and again in the constitution of Clement XIII, dated August 27, 1778, "Cum exercitibus," as well as in the constitutions of Pius VII, dated June 12, 1807, "Compertum est," and of Pius IX, dated April 14, 1848, "Nobis nuper fuit." The first constitution of Clement XII is cited in all subsequent constitutions as the fundamental law upon which they are based and expanded, and therefore, for the sake of our matter, we will present it here, at least with regard to the part that concerns the external forum, omitting, as

[*Latin ed. p. 581*]

SPANISH, ETC. 581, which do not pertain to our purpose, contain clauses which grant faculties for the internal forum, and many privileges, for the various needs of the army and those who serve it. The Constitution of Clement reads as follows: "Clement, Pope XII, for the future record. - Because in the armies, most beloved sons in Christ, the Catholic King Philip of Spain, many things can happen in which, for the proper administration of the Sacraments and for the salutary direction and care of souls, of those

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who live and are present in the camps, as well as for the examination and resolution of causes and controversies among them which pertain to the ecclesiastical forum, the work and ministry of one or more ecclesiastical persons is necessary; therefore, because it is not easily possible to have recourse to their own parish priests, or to the local Ordinaries, or to Us and the Apostolic See: therefore, We, inclined by the humble supplications presented to Us in the name of the aforementioned King, grant to the Major Chaplain of such armies, appointed by the same King for the time being, the following faculties, either by himself or by others, namely, by priests who are judged to be good and suitable, previously examined and approved by the aforementioned Major Chaplain (provided that they have not been approved by their own Ordinary), and delegated by the same Major Chaplain, with respect to the soldiers and other persons of both sexes who in any way pertain to said armies (including also auxiliary troops), only to exercise [jurisdiction] over them. - Then, in the following twelve paragraphs, the faculties and privileges are enumerated, up to paragraph XIII, in which the matter of the forum is discussed in these words: - "Furthermore, We grant to the same Major Chaplain, either by himself, or by others, namely, by priests who are judged to be good and suitable, and who are experienced in the ecclesiastical forum, according to the attestation and information obtained from their Ordinary, or from other trustworthy persons, by inquiry made by the aforementioned Major Chaplain, all and every ecclesiastical jurisdiction to be exercised over those who, in the aforementioned armies, serve for the administration of the Sacraments, and also for the spiritual care and direction of souls, whether they be secular clergy, or priests, or members of any of the Regular Mendicant Orders, and as regards the secular clergy, their TRUE BISHOPS AND PASTORS, and as regards the Regular clergy, their SUPERIORS GENERAL. And all ecclesiastical causes, secular, civil, criminal, and mixed, among or against the aforementioned persons in the aforementioned armies, shall be..."

[*Latin ed. p. 582*]

582 OF SPAIN, ETC. Those who, in any way, pertain to the ecclesiastical forum, whether summarily or simply by plan, without clamor or the appearance of judgment, but solely by examining the truth of the facts, are to be heard and the due end to be determined; against those who are disobedient, ecclesiastical censures and penalties are to be imposed and aggravated, and even frequently re-aggravated; and the aid of the secular arm is to be invoked; notwithstanding the apostolic, and in the universal, provincial, and synodal councils, general or special Constitutions and Ordinances; nor also the statutes and Constitutions, confirmed by the Apostolic See, or strengthened by oath, or by any other means, and the privileges, indulgences, and Apostolic Letters, granted and approved, and renewed, to Orders... or to

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individual persons in any way. "By a Constitution of April 14, 1762, the same Pontiff established permanently a Major Chaplain, who was to be first designated by the King. Immediately after the word 'inclined,' it follows in this manner: - "To our beloved son, Bonaventure, Presbyter, Cardinal of Cordova, Spinola de la Cerda, also known as St. Charles, by Apostolic concession and dispensation, the modern and, for the time being, Patriarch of India, who must henceforth be the Major Chaplain, or Vicar of the armies of the same King, is granted the following powers, etc." Those same powers are entirely transcribed from the preceding Constitution. Later, in 1768, Clement XIII confirms and explains the aforementioned powers in the following manner, beginning also with the word 'inclined': "We wish to confirm, approve, renew, and to give them the force, strength, and protection of Our Apostolic authority, all the same declarations, concessions, and everything else and all things contained and arranged therein, which are to be considered fully and sufficiently expressed, and inserted verbatim, and We command and order that all and each of those to whom they pertain, and at all times, in the future, shall observe them without hesitation and irrevocably; and We grant to the same Bonaventure, Cardinal... the modern, and, for the time being, Patriarch of India, the following powers, according to the tenor and form of Our aforementioned Letters, in all things and through all things, as stated above, to be understood and interpreted and executed."

[*Latin ed. p. 583*]

OF SPAIN, ETC. 583, that, either by themselves or through another, or through other persons holding positions of authority, or through other upright and suitable priests, the aforementioned Chaplain Major or Military Vicar shall delegate [certain duties] to the soldiers, etc." Subsequent letters from Pius VII, dated June 7, 1807, and from Pius IX, dated April 14, 1848, merely state who are properly subject to this military jurisdiction; but they introduce nothing new regarding the jurisdiction itself, or the persons through whom it must be exercised, but rather, through confirmatory clauses, they corroborate and safeguard all that has been established previously. Therefore, I refrain from presenting them, in order to proceed to the third and final jurisdiction, which is the Rota of Madrid. This Tribunal was established by Clement XIV through the Bull "Administrandae iustitiae" on March 26, 1871, and replaced the Auditing Chamber of the Apostolic Nunciature of Madrid, inheriting its jurisdiction, both in initial proceedings and in appeals, which the aforementioned Auditing Chamber had previously enjoyed. Omitting general matters that are of little relevance to the subject, the clauses of greater importance are set forth here, from which it will be readily understood the nature and extent of this jurisdiction, to which, as we shall see, the sentences are primarily subject, against which an appeal is brought. - Having stated that, "as the Auditor for the time

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being present in the Tribunal of the Nunciature of Spain has customarily been accustomed to hear and decide, in the first instance, both civil and criminal cases of regular clergy and others exempt, as an ordinary judge; and also, in cases in which the Venerable Archbishops and Bishops of these kingdoms have already rendered their judgments, the same Auditor has customarily confirmed or overturned them as a judge of appeals," the Pontiff proceeds to establish a new tribunal with these words: "By our own initiative and with certain knowledge and mature deliberation, and by the fullness of our Apostolic power, we permanently deprive the Auditor for the time being present of our and the Apostolic See in the kingdoms of Spain, with whatever authority, faculty, and jurisdiction to know, decide, and determine all and any of the aforementioned cases, both in the first instance and in subsequent instances, and in the degree of appeal, and we wish and command that he be considered as private; and in his place, we establish and constitute, with our initiative, knowledge, and power, a Rota of the Apostolic Nunciature, to be called the Rota of the Nunciature, in the city of Madrid, of the Diocese of Toledo."

[*Latin ed. p. 584*]

584 OF THE SPANISH ETC., with equal fullness, perpetually, likewise we substitute, establish, and enact. To this Tribunal of the Rota, so that it may be established, cognizance of the aforementioned causes, for the time being, shall be entrusted to Our Nuncio in the kingdoms of Hispaniae, in the same manner and form as Our Tribunal of the Signature of Justice has always been accustomed to entrust causes in this venerable City to the Audience of the Roman Rota. "Thereafter, the Bull proceeds to determine the number of judges who shall judge the causes, by 'turns,' as they say, and it establishes what is to be done when the judgments are divergent. Six judges must be appointed to this Rota by the King of Hispaniae. - Subsequently, the jurisdiction of the Rota is limited in the following manner: "However, not all causes by the aforementioned Nuncio can be entrusted to this new Rota, since those pertaining to the exempt and those residing or staying in the Provinces of those kingdoms, as the aforementioned Nuncio must and shall entrust such causes or of those places to the Ordinary or synodal judges of those same Provinces, reserving the right of appeal to the Apostolic Nunciature, with similar statutes and mandates; and in other causes, which, after an appeal has been interposed from the judgments of the Ordinary or Archbishops of those kingdoms, are brought in the second or third instance to the aforementioned Nunciature, the aforementioned Nuncio, having seriously considered all the circumstances of the aforementioned causes and of the persons and distances of places, observing, as far as possible, the decrees of the Holy Canons and Councils, without a serious cause preventing the bringing of litigations and litigants outside their respective Provinces, shall entrust those causes to the synodal judges of

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the Dioceses or to the aforementioned new Rota. "In other criminal causes, all of this must be strictly, entirely, and perpetually observed, which is prescribed by the Council of Trent, the Holy Canons, and the Apostolic Constitutions concerning appeals and recourse in all matters that are compatible with this new form of judgment, instituted by these Our Letters; and hence, a gradual and legitimate order shall always be observed in admitting, receiving appeals, and any recourse, so that in the first instance, all Ordinaries shall perpetually retain the power of judgment, and regular monastic discipline, as far as the correction of religious, is concerned, shall remain firm.

[*Latin ed. p. 585*]

HISPANIARUM, etc. 585. The Holy Father then describes the manner of appointing both a commissary and an abbreviator for the new tribunal, and subsequently adds a clause of, it seems to me, the utmost importance: "We decree and declare that the jurisdiction and authority of the Apostolic Nuncio, for the time being existing in the kingdoms of Hispania, shall not, by these presents, be diminished, altered, or innovated in any way. Wherefore, We command and decree that he shall enjoy, possess, and have all those faculties, authorities, and privileges which he, as Legate from the aforementioned Holy See, previously enjoyed, possessed, and held, according to the Apostolic Letters, in a similar form to a Brief, issued for each of such Nuncios; and that he shall, in the future, enjoy, possess, and hold them all. We further decree and ordain that the jurisdiction, authority, and power of the same Nuncio shall not, by these Our Letters, or by any other ordinances or regulations which may be determined and prescribed in the future concerning the new tribunal of the Rota, be in any way altered, diminished, or innovated, but that it must, perpetually, as it was before, so also in the future, remain entirely firm, with the same full measure of will, knowledge, and power." Having considered all these matters, it is easily understood that there are weighty reasons on both sides. The Rota supports its arguments with at least very probable reasons, and pronounces a definitive judgment; nor do the Bishops act lightly or imprudently in rejecting this judgment, as they did when appealing to the Holy See. The matter, first presented to the Holy Congregation for Extraordinary Ecclesiastical Affairs, was then sent from that Congregation to the Sacred Congregation of the Council, so that the question might be submitted to the judgment of the Most Holy Fathers, as indeed it was. On June 14, 1890, a doubt was proposed in the Sacred Congregation of the Council: "Whether the sentence of the Rota of Matritensis is null and void in this case, due to a lack of competence." And the Most Holy Fathers gave the following response: "Let the opinion of the Consultor be examined, with all those concerned being brought back, and with the following understanding": The understanding is: that the Apostolic Nuncio should be written to, so that, until the question

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is settled, the Rota of Matritensis should abstain from any further action in this matter. The Consultor said: "Since it is my duty to give an opinion on this question, after careful consideration of all the documents, I see no better or clearer way to comply with the will of the Sacred Congregation than to present to the Most Holy Fathers, in order: 1. The reasons presented by the Bishops; 2. Those by which the Rota seems..."

[*Latin ed. p. 586*]

586 OF THE SPANISH ETC.: And thirdly, my opinion and judgment concerning the arguments in the case, and concerning the meaning which seems most probable to me, regarding the Constitutions of the Popes. The contention is on the part of the Bishops. Their strongest argument is the Brief of Gregory XIII, "Exposcit debitum," the obligation of which is also declared and confirmed by the tenth law of Title IX, Book I, of the Collection, commonly called the *Recopilación* concerning the laws of the Indies. This Gregorian Constitution decreed that all causes in those regions should be concluded there, even in the court of appeal, and furthermore, it invalidated and annulled all judgments of those places, contrary to the order established by it. Therefore, the Bishops in that entire territory held and peacefully exercised this privileged jurisdiction for centuries; for it had not been derogated from by the Brief of Clement XIV, by which the institution of a tribunal of the Rota was established. In this Brief, it is indeed clear that the jurisdiction of the Auditor of the Apostolic Nunciature in Madrid is abolished, and a new tribunal is established; but no word is found that refers to the right of the Bishops in the overseas regions, nor is there any clause that derogates from the right introduced by the Brief "Exposcit." Just as they were in peaceful possession before the Constitution of Clement XIV was issued, so they remained after it, as is evidenced by the fact that very recently the Bishop of Puerto Rico concluded a certain divorce case according to the Gregorian Constitution. But neither the Roman Pontiffs, Innocent X in a Brief of September 26, 1644, nor Clement XII in one of February 1736, and others who defined the powers of the Vicar General of Castrum, established anything contrary to the Gregorian law; and although King Charles III, by an ordinance of October 2, 1784 (Laws 4, title 5, book 2, of the *Novísima Recopilación*), decreed that the Tribunal of the Rota of Madrid should hear appeals and recourse cases from the Vicar General of Castrum, and that the powers and jurisdictions obtained from the Apostolic See should be maintained, it does not follow that anything was derogated by this law from the privileged jurisdiction in the overseas regions introduced by the Brief "Exposcit," nor from Law 10, title 9, book 1, of the *Recopilación*. For shortly after the date of the ordinance of Charles III, when a certain Peruvian appealed to the Rota of Madrid, the Archbishop of that kingdom denied the appeal, and the king approved of this action, who, furthermore, by his ordinance of October 17,

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1789 (perhaps 1788),

[*Latin ed. p. 587*]

OF SPAIN, ETC. 587: It was decreed that, with regard to military causes within the Kingdom of Peru, the practice established for other subjects of those dominions should be maintained in appeals – which is nothing other than the Gregorian jurisdiction. Furthermore, it is stated in the Brief that this applies entirely to "islands" and "the mainland" of the ocean. Therefore, the Constitution "Exposcit" must continue to remain in full force in the places for which it was granted, even after the establishment of the Matritensis Court with all its rights. And rightly so. For the same serious reasons – the great distance, the greater expenses of litigation, and the longer time required to conclude cases – affect those subjects residing in those places who are subject to military jurisdiction, no less than other inhabitants who are subject to the ordinary jurisdiction of the Bishops. This opinion is strengthened by the admonitions of Charles III, addressed to the Patriarch of India. Furthermore, the Gregorian Constitution cannot be abrogated except by other Pontifical documents, in which both the Constitution itself and its abrogate or revocation are expressly stated, or at least with equivalent words. On the contrary, in the documents and Constitutions establishing the Court or the military jurisdiction, complete silence is observed regarding the Gregorian Brief, which nevertheless introduced a special discipline regarding appeals in the overseas parts of the same Kingdom of Spain, and it would be all the more necessary to mention it specifically, given that those very serious reasons still exist, which prompted Gregory XIII to issue the "Exposcit" Constitution. Therefore, since judges are delegated to hear military causes, and in overseas regions, Bishops are delegated to military matters, the form of judgment prescribed by the Holy See for "all causes, both criminal and otherwise" must be observed. Furthermore, apart from the case of Salvadores and Botas, there is another case connected with this in which the Court issued a final judgment against the Bishop of Havana, and against the action of the Court, the Bishop argues, in addition to the privilege of the "Exposcit" Brief: 1. That the Archbishop, in the same matter, can appeal to the Holy See, which, according to the authorities, should have a suspensive effect on any appeal to a lower tribunal; 2. That after Trent, the causes of Bishops can be heard and concluded by the Pope alone or by the Provincial Council; and therefore, the Court has acted beyond its powers, unless it is said, which seems absurd, that the condition of delegation does not apply.

[*Latin ed. p. 588*]

588 OF THE SPANISH. To deprive a Bishop of the exemptions and privileges to which he ought to enjoy by common right. - 3. That Salvadores incurred excommunication "in a special manner" reserved to the Pope,

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because he brought a case before a lay tribunal, and a judge ecclesiastical; therefore, even if the Rota were competent in the matter, all acts following the excommunication would be invalid and null. The contention of the Rota of Matritensis. To these arguments, the Bishops of Havana and Cuba, opposed another argument, the Rota, or rather, those who defend its jurisdiction in the matter of appeals concerning these regions. Firstly, they say that the essence of the "Exposecit" brief consists in the fact that it makes a judgment final wherever it is in force. Thus, the King's petition was of this nature, and this is the reason given for the granting of the brief. From this, they infer that the aforementioned Constitution derogates from common law, both in substance and in form; in substance, because three judgments make a judgment "executable" by law; in form, because, according to law, appeals must be made gradually, from the lower to the higher court. Therefore, although it may seem favorable on one side, substantially it is an odious law, which restricts the right of defense, as commonly admitted in the Church; therefore, the "Exposcit" brief must be interpreted strictly, and there is no room for arguments "by analogy" or "by identity," according to the axioms: "we must proceed strictly in matters of correction," and "that which exceeds common law cannot be drawn to a consequence," and further, "that which is granted sometimes out of necessity cannot be drawn to a consequence" (Reg. Iuris, in. 6. 28-78); and furthermore, since the law is concerning "solemnities," its spirit and purpose are evident in the letter; therefore, in order for it to be enforced, it requires two distinct dioceses and two tribunals. b) The Clementine Constitutions deprive Ordinaries of jurisdiction over all soldiers and persons attached to the military, and attribute that jurisdiction to a single person who is able to exercise it, either by himself or through ecclesiastical delegates, whether they are Bishops or Metropolitans. These Constitutions, being more recent, derogate from the general law "including and not excluding" any previous law. c) By virtue of these, the dominions and regions of Hispaniae, both overseas and others, in relation to military jurisdiction, constitute only one privileged diocese with one Prelate, the Patriarch of Indiarum, and one tribunal formed of delegates, who in each of their respective places, are like Vicars of him, and...

[*Latin ed. p. 589*]

SPAIN, etc. §89, they say and conclude with a single judgment, that since there is no appeal from one to the other, just as the Bishop does not judge in appeals from the sentence of his General Vicar in the common forum, d) Although, therefore, the same person performs the functions of both the Ordinary and the delegate of Castres, he is entirely dependent on the Major Chaplain with regard to the second instance; he cannot delegate except in cases expressly determined by the Constitution, nor permanently, so that the Vicars themselves receive true jurisdiction from the Patriarch,

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which is an argument that all jurisdiction is derived from him. e) Then, the Constitution of Clement XIV of the year 1771, later than the others, transfers the jurisdiction which previously belonged to the Auditor of the Nunciature, namely, the power to judge cases in the first instance of exempt persons and others in the appellate instance, for which reason it is established as an ordinary and supreme tribunal, with no limits except those expressed in the Brief. Therefore, those who defend the jurisdiction of the Rota infer that in the Brief "Exposcit," suitable terms are not found which would apply to military cases, as the law requires. And if it is not said that all such cases must be concluded with a single judgment, which would be a new and unusual doctrine, then there is no other tribunal to which an appeal can be made, except the Rota. Furthermore, they deny that the Brief "Exposcit" can be extended to military personnel for another reason; for it concerns ordinary jurisdiction, and not military jurisdiction, which did not yet exist permanently. Nor does it matter that it includes "exempts"; for this only means that those who were formerly exempt have lost part of their privilege by the Brief; while the soldiers who were under this jurisdiction at that time were exempted from it by the Clementine Constitution, issued two centuries later. Furthermore, they say, by what jurisdiction do the Ordinaries judge who are delegates? And they cannot judge in the second instance, unless they have received the power to do so from the military General Vicar; and if, as happens, they judge as delegates in the first instance, they cannot do so as Ordinaries, since this change of jurisdiction does not seem to be contemplated anywhere in the Apostolic Constitutions. Nor do Ordinaries have jurisdiction over soldiers who are not subject to them. Therefore, in Spain, the Metropolitan does not judge in the second instance cases decided by a delegate of Castres by virtue of his delegation. It may be asked, who then was the judge of appeals after the Clementine Constitution, but before the establishment of the Rota? The answer is:

[*Latin ed. p. 590*]

590 OF SPAIN, ETC. The Auditor of the Ecclesiastical Court, in the first instance, if the parties are from Castrum, are strictly exempt, or immediately subject to the Holy See. But this could not be the case; since they were exempt in a special manner, and judgment in the first instance was given to the General Vicar of Castres and his delegates, the Auditor was left only with the judgment in the second instance and in the appeal, which passed to the Rota by virtue of the Constitution of Clement XIV. Finally, the Rota did not admit the advantages alleged, the greater distance and expenses, since in civil causes of laymen, appeals are constantly made to the supreme tribunal of the peninsula. Censure and Opinion of the Consultant. Having now presented the reasons alleged by both sides, we now come to the judgment on the matter in question; and at the very beginning, I

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confess that the opinion that favors those beyond the seas is more pleasing to me. Those who defend the action of the Rota argue keenly; perhaps too keenly, but nevertheless they do not entirely convince. More subtle reasons, as it were, of the technicalities of law are lacking in almost no case; but however subtle and numerous they may be, they completely fail whenever a certain, undeniable, and incontestable fact is opposed to them, which, by its very nature, refutes and destroys the arguments presented on the other side. Such a fact in the present case is the often-cited Constitution "Exposcit," which introduced a new method and order of procedure not only for appeals in the overseas regions of Spain, but also imposed a penalty of nullity on all proceedings in cases that do not observe this order. Let us hear the words of the Pontiff: "in criminal cases and in all other matters concerning the ecclesiastical forum" - and then - "We decree that all and each judgments attempted otherwise than as stated above, shall be entirely devoid of validity or force, and that any subsequent appeals, if made in a manner contrary to the aforementioned, shall be null, void, and of no effect" - and further, which should be carefully noted - "that they must be judged by any judges and commissioners, with whatever authority, even Ordinary judges and Auditors of the PALACE APOSTOLIC, and that their judgments shall also be null and void, if they judge otherwise, etc." The rule established in these overseas judgments is that a double judgment must be made, each of which must be rendered in the very overseas regions, made by appeal to the Metropolitan in the case of the Ordinary, or to the nearest Ordinary if there is no Metropolitan.

[*Latin ed. p. 591*]

SPAIN, ETC. §91 The court shall be held, and all judges are bound to conform to its rules in all ecclesiastical matters, under penalty of nullity. And since the law does not distinguish, neither are we permitted to distinguish. Therefore, it makes little difference whether the judge is ordinary or delegated, vicarious general or capitular. When the Supreme Pontiff established this new order of appeals in overseas territories, he included not some, but all, judgments of ecclesiastical courts. This could not have been otherwise; for the reasons presented by the king in his petition, and admitted by the Holy Father, namely, the very serious inconveniences of "distances" and "expenses," affect all cases equally. Therefore, how could judgments in cases at Castrum within the same region be excluded? Since these cases, just like those in other regions, concern the ecclesiastical forum and the colonies of Spain, which the Holy Father intended to provide for by the law "Exposcit," which therefore includes cases at Castrum with all other judgments in those regions. It must be understood, unless the Supreme Pontiffs, authors of the military jurisdiction, have prescribed a special order of appeals to be observed in the judgments of delegated judges at Castrum. However, Innocent X and other Pontiffs, who initiated and completed this

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jurisdiction for Spain, and Benedict XIV, who granted a similar concession to the King of Sardinia in "Quoniam in exercitibus," May 28, 1746, do not mention appeals at all. They simply state: "All ecclesiastical causes, secular, civil, criminal, and mixed, between or against the aforementioned persons residing in the aforementioned military units, which in any way pertain to the ecclesiastical forum, even summarily, simply and plainly, without the pomp and form of judgment, solely by examining the truth of the facts, shall be heard and brought to a proper conclusion, and against any who disobey, ecclesiastical censures and penalties shall be imposed, and these shall be aggravated and re-aggravated, and the aid of the secular arm shall be invoked." I confess that when I read these words, a strong suspicion or conjecture arose in my mind, that the Supreme Pontiffs intended to follow the practice in this matter of military jurisdiction, which is widespread among nations, according to which appeals are not admitted, and after a single judgment confirmed by the commander, the matter is referred to execution. Even if this conjecture is rejected, as being inconsistent with the benevolence and prudence of ecclesiastical legislation, it nevertheless compels us to conclude that an order must be observed in the judgments of delegated judges, in the peninsula, which is established for other judgments in the same locality.

[*Latin ed. p. 592*]

592 OF SPAIN, ETC. Concerning the overseas territories, the law promulgated by Gregory XIII for those regions must be observed. The Pope desires that the military vicars be "true prelates": these are his very words. Therefore, they possess a kind of diocese. Indeed, in the overseas territories, any Bishop is also a military vicar; this is a practice that has endured for centuries. Therefore, it must be said that in appeals from sentences rendered by them, whether as ordinary judges or by virtue of their military vicariate, the same order must be observed, for where the law does not distinguish, neither must we. Therefore, the assertion made by the defender of the Rota, namely that the Ordinary, when examining cases involving military personnel, does so by virtue of a delegation from the Patriarch of India, just as in the peninsula, is incorrect; for the delegation is limited to the first instance, and therefore the ordinary court lacks jurisdiction in appeals. This difficulty arises from a misunderstanding of the papal documents... For the Patriarch of India does indeed choose vicars, but he does not limit, nor can he limit, the jurisdiction attached to the vicariate; the Popes themselves indicate this sufficiently: "Major Chaplains... possess the following faculties, either by themselves or through other priests... through those delegated to them concerning the soldiers... exercising them as if they were true prelates and pastors." Therefore, as soon as overseas Bishops are delegated, they acquire, by virtue of their office, the power over the military personnel under their jurisdiction; for they are "true prelates,"

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and therefore they hear their cases, not only in the first instance, but also in the second and third instances of jurisdiction, observing the order of appeals established by Gregory XIII. Is it not therefore to be suspected that all the Bishops and Archbishops of those regions have been permanently appointed as military vicars, and that their powers have been renewed continuously every seven years? Furthermore, even supposing that military vicars are not legally entitled to hear appeals, so that ordinary judges may have jurisdiction there, as is argued by the opposing party, such a state of affairs would lead to a result unfavorable to the Rota. For it is certain that Gregory XIII granted the Bishops of the Spanish islands the power to hear all ecclesiastical appeals, and that anyone holding Roman pontiffs, while maintaining fidelity to those belonging to the army, would not make those military judges, even if they resided in those places, subject to them in matters of appeals.

[*Latin ed. p. 593*]

SPANISH, ETC. 593. They ought to acknowledge that the faithful residing in overseas regions remained subject to the Bishops with regard to appeals. Indeed, although the Pontifical Letters concerning the military jurisdiction in Spain, and also those of Benedict XIV which establish a similar jurisdiction for the Kingdom of Sicily, explicitly enumerate all the powers granted, even the smallest ones, not a single word is found concerning appeals. Shall we say that Innocent X and other Popes, while establishing the military jurisdiction, took away something of the jurisdiction of the Bishops, and that they transferred it to the military prelates? But this is utterly absurd; for those Popes intended to grant power to the pastors of the army, and consequently, they only diminished the jurisdiction of the Bishops to that extent. Furthermore, there is nothing that appears to be contrary to the jurisdiction of the Bishops in the constitution of Clement XIV, by which the Tribunal of the Rota of Madrid was created. This Tribunal was established to examine cases which could only be settled by the Apostolic See or a judge delegated by it; and it was assigned only those cases which the Apostolic Nuncio's Auditor had previously judged. But it seems certain that the Apostolic Nuncio's Auditor never, after the aforementioned decree of Gregory XIII, claimed the right to examine cases, whether defined by ordinary judges or by military delegates in overseas regions. In other words, it was granted to the Apostolic Nuncio's Auditor, first, and then to the Tribunal of the Rota of Madrid, to settle ecclesiastical cases of Spain, which otherwise would have to be referred to Rome. But after Gregory XIII had decreed that, "in all criminal and civil cases, and in all matters concerning the ecclesiastical forum," all degrees of judgment should be completed there, and that a special order of appeals should be observed in those regions, under penalty of nullity of the proceedings, "declaring that all and each of the judgments, otherwise than as is stated above, shall be of no

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force or validity, and that any appeals which are subsequently introduced or shall be introduced, if not made in the manner prescribed, shall be null, void, and of no effect, and that such judgments shall be rendered invalid and void, even if pronounced by any judges or commissioners, whatever authority they may have, including the local Ordinaries and the Auditor of the causes of the Apostolic Palace" (sublata eis et eorum cuilibet quavis aliter iudicandi facultate), it seems that no ecclesiastical cases in overseas regions remained to be judged in Rome.

[*Latin ed. p. 594*]

594 OF THE SPANISH, ETC. This [law] applies, whether it has been attempted by anyone, with any authority, knowingly or unknowingly. The defect in the argument of the Roman Rota appears to consist in the fact that its advocates did not sufficiently understand the true nature of the Gregorian legislation, wrongly confusing it with ordinary jurisdiction. But in truth, it differs essentially from ordinary jurisdiction. Ordinary jurisdiction is not a special jurisdiction, but rather something entirely specific that a Bishop, for example, with the approval of the Archbishop, sees fit, and a third Prelate, neither of whom is superior to the others, defines the judgments of both. From the fact that it is a special jurisdiction, it follows, above all, that even if Clement XII has exempted the military from ordinary jurisdiction, it does not immediately follow that, by his Bull, soldiers and their chaplains are also considered to be excluded from the special jurisdiction in sections 2 and 3, which was established for the colonies. The principle of law is that a prior law is not changed more than is expressed in the subsequent law; moreover, a correction of laws, being something so odious, is not easily presumed, and it is advisable to reconcile laws with laws and to avoid correcting them. These common principles of law are perfectly suited to the present case. Furthermore, since the Gregorian jurisdiction is like a special law or privilege, such privileges are not at all abrogated by subsequent laws, either in whole or in part, without express mention thereof; such a mention is entirely lacking in the Bulls that establish the military jurisdiction and the tribunal of the Roman Rota in Madrid. Therefore, it seems that the Gregorian Constitution still retains its full force in all the places for which it was granted, so that even military cases from overseas must be brought before it, as in sections 2 and 3, just like "all other matters concerning the ecclesiastical forum"; indeed, the same reasons apply to them, namely, distance and exorbitant expenses. Indeed, since the overseas regions of Spain include not only the islands and the mainland of the Ocean, but also the Philippines, it is easy to see the most serious inconveniences if military cases from these regions were to find their proper place of appeal only in Madrid. The advocate of the Roman Rota has dared to deny these inconveniences, citing the greater means of communication and ease of our age; but the very case of Salvadores against D. Urreta has

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amply demonstrated that these inconveniences still exist. In this matter, the Archbishop of San Iacobo de Cuba:

[*Latin ed. p. 595*]

SPANISH ETC. 595 "From the island of Cuba, from the island of Puerto Rico, and from the Philippine Islands to Madrid, the distance is thousands of leagues for the journey there and back. This is the magnitude of the expenses that are required by the parties in any dispute or cause that is being considered before the Tribunal of Madrid. For if the plaintiff and defendant reside in these islands, they must either undertake the longest journey or appoint procurators in Madrid to pursue the appeal. Both are very costly, as is abundantly clear from the present case of Mr. Urreta. For if the sentence passed against him were to be enforced, he would have to pay eight thousand silver coins for expenses! This seems sufficient to justify the sentence, which, saving the better judgment of the Most Eminent Fathers, seems to me to be true and just, and in conformity with the interpretation of the Briefs; namely, that the Tribunal of Madrid was incompetent, and therefore the sentence, both against Mr. Urreta and another against the Bishop of Habana, passed by him, should be annulled. With these premises, the question to be resolved was whether the sentence of the Tribunal of Madrid is null and void in the case of a lack of competence. RESOLUTION. The Holy Congregation, having knowledge of the matter on March 3, 1892, decided to respond: Affirmative and furthermore.

FAVORS OF MARRIAGE. March 5, 1892. Session 21, chapter 7. Concerning reforms.

SUMMARY OF THE FACTS. Teresia Minzolini, daughter of Francis and Mary Tarlazzi, born in the town of Cotignola in the Diocese of Faenza, celebrated a valid marriage in the sight of the Church on October 13, 1873, with Nicholas Vaccari from the town of Porto, in the Diocese of Ravenna, at the age of 33. Shortly after the marriage, the woman, having entered into the consortium of married life, went to the home of her husband, and spent about a month there with her husband.

[*Latin ed. p. 596*]

896 In Faventina, however, having been there, she fled from the place where she had been ill and returned to her paternal home; and there, after fifteen days, she was restored to health, and again returned to her husband. But the disputes which had long separated the hearts of the spouses were renewed with greater intensity, and after two days, Teresia abandoned Nicholas, and returned to her homeland, and to her father's house; where, after being visited by her husband for some time, she yielded, albeit unwillingly, as she herself asserts, to marital relations, not once, but several times. Then, however, since Nicholas had been repeatedly rejected by his wife, Teresia, in the year 1878, entered into a civil contract

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with a certain Charles Grilli, whom she had preferred before marriage, and from him she has borne seven children thus far. The unfortunate woman, after committing this crime, repented over time, and, reflecting on her soul, she considered that she had entered into marriage only under the influence of her father and out of fear. In the month of September 1885, she requested that the marriage bond be declared null, due to lack of consent, by the highest ecclesiastical authority. The depositions of the parents, obtained through the intercession of an advocate, were also presented before the local Vicar in Cotignola, and these appeared to fully confirm the words of Teresia. All of these matters were immediately sent by the Sacred Congregation to the Bishop of Faventina, so that, as is customary, he might conduct the proceedings according to the Constitution of Benedict XIV, by the grace of God, and the Instructions of the Sacred Congregation of August 22, 1840. Therefore, with a Defender of the Marriage appointed, the Bishop himself initiated the legal proceedings on June 30 of the following year. First, the plaintiff was questioned, and then the husband, who, it is asserted, was duly summoned twice, was declared contumacious; afterwards, witnesses were questioned regarding the seventh woman, and finally, after hearing the defender of the sacrament on July 13th, a judgment was rendered in favor of the validity of the marriage.

A SYNOPTIC DISCUSSION

OPINION OF THE THEOLOGIAN.

Before proceeding to the discussion of the present case, the Consultor stated that he considered it necessary to preface his remarks with certain points which would pave the way to a safe conclusion. And, in the first place, it is beyond doubt that, among the other impediments to human actions, force and fear are to be included, which impediments...

[*Latin ed. p. 597*]

FAVENTINA 597: Both theologians and canonists unanimously consider these to be among the effective causes that render a marriage bond capable of being dissolved, since they are opposed to the sanctity and freedom of marriage. Therefore, I believe it is necessary to say something first about force and fear, so that it may be clearly evident whether the opinion of the Faventina court should be maintained or rejected. Force, or violence, is defined by theologians as: "That which is wholly repugnant from the very beginning to the one who suffers it." From this, it is clear that violence requires 1. that it be from an external source, because no one can properly be said to inflict violence upon himself; 2. that the one suffering it resist with all his power, that is, with every effort. When an external agent, with power, whether external or internal, acts in such a way that the will of

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the one suffering is in no way desired by the patient, then that action is, therefore, simply and absolutely involuntary, and in no way imputable. However, if the violence is not total in itself, it does not eliminate the will, but diminishes it; for where the will does not resist as much as it can, some part of the will remains, and according to the greater or lesser resistance, the action will be more or less voluntary, and culpable. Fear is defined by theologians as: "The trembling of the mind from the representation of evil or the future, or that which is impending." From this definition, it is clear that fear differs from violence in that violence is always and only from an external source, while fear can arise from an internal source, such as the fear of shipwreck, and the fear of hell. Also, they differ in that violence is inflicted upon the body, while fear is inflicted upon the soul. Furthermore, fear can be grave or light, depending on whether the evil feared is grave or light, and it is called absolutely or relatively grave, meaning that it does not move a steadfast and strong man, but it does move a timid person, like a child, an old person, or a woman. To this category belongs reverential fear, that is, the fear by which one is afraid to resist someone to whom one is subject. This will be grave or light, depending on the person who is revered and the person who is revering. However, Pontius rightly observes that this fear, without the apprehension of another evil, such as serious threats, is not so...

[*Latin ed. p. 598*]

598. Fear is distinct from simple reverence, which, of itself, does not induce fear of any evil, but rather brings about a certain blush of shame. It is clear that a light fear does not abolish the will, nor diminish it, according to the well-known principle of law: "A just excuse is not a vain fear." Indeed, even a grave fear does not absolutely abolish the will, unless one considers a particular case in which it is so grave that it overwhelms the mind; for neither intellect nor knowledge is abolished, nor is the inclination of the will, although this may be diminished. Therefore, the Most Holy Doctor Bonaventure said: "A coerced will is still a will." This is clearly demonstrated by the example of a merchant who throws goods into the sea, which he certainly would not do if he could preserve them without danger to his life; yet, in those circumstances, he acts according to his will. As St. Augustine says in *De Spiritu et Littera*, chapter 31: "If we consider more closely, even that which is said to be done unwillingly is done by the will." Therefore, fear, whatever its cause, does not, of itself, prevent an act chosen by it from being simply voluntary. This is what theologians and canonists commonly teach. With these things noted, the case of Teresa Minzolini deserves careful consideration. As can be gathered from the proceedings, she, having barely begun her marriage with Nicholas Vaccari, having left her homeland and her father's house, went to a new region, namely, the larger Port, and spontaneously went to the house of her husband, where

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she lived with him for about a month, performing the duties of conjugal life. However, for the sake of her health, she returned to her father's house, where she recovered for fifteen days, and then returned to her husband. Who, considering these things, would not immediately conclude that the marriage in question had been entered into with full consent? Indeed, in it, there is no reason to suspect the contrary, nor is there any sign in the conduct of Teresa that is ordinarily found in marriages begun by force or fear, namely, that the bride, after the marriage ceremony, should flee, or refuse to enter the house of her husband, or finally, refuse to fulfill her conjugal duties to her husband.

[*Latin ed. p. 599*]

In the case of Faventina, a refusal was made without due consideration. Regarding all of these matters, not a single word is found in the procedural records; and a reasonable presumption immediately arises concerning the consent given in the marriage, and the marital act ratified, or truly confirmed. Even more so, because Teresia, after subsequently leaving her husband, and returning to her father's home, where she was visited several times by him, had carnal relations with him on several occasions. A certain principle of law is firmly established: "A woman who, after being invited to marriage, and afterwards knowing [the suitor], is not heard to object to the marriage, because she consents through ratification." This is found in Chapter [on] Consultation concerning Betrothal and Marriage. Furthermore, in the present case, both Teresia Minzolini and her father must be considered. Teresia, because before the proposal of marriage to Nicholas Vaccari was made to her, she was already affected by a love for Charles Grilli; and her father, because he was in a state of poverty. Therefore, given these circumstances, it is not surprising that the woman says in her initial statement: "From the very beginning, I rejected him as being contrary to my nature; and because I loved another; but, spurred on by the prayers of my parents and friends, who knew him to be wealthy, I finally gave my consent." From these words, it is clearly evident that, although Teresia's initial love for Charles Grilli was the cause of her not having complete affection towards Nicholas Vaccari, it is also evident that she willingly consented to the marriage proposed with Nicholas, attracted by the great advantage she would certainly obtain. I have said that Teresia's father must also be considered. For the unfortunate woman, after expressly promising to marry Nicholas, says: "But afterwards, showing my aversion, my father said: 'If you refuse to have that young man, and choose another, I will trample you underfoot. You know that my affairs will go from bad to worse; I will be forced to flee, and you will never see me again.' And he said this with regard to the advantage he hoped for." The father's words, although at first glance they seem to express a certain excess on his part, must, when considered in relation to the preceding and concurrent circumstances, be understood

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differently. For Teresia had already promised marriage to Nicholas Vaccari.

[*Latin ed. p. 600*]

600. The Faventina lady had promised, and afterwards seemed to be retracting from the given faith, whereupon the Father, angered by this urban manner of acting, repeated the words, desiring to preserve the faith given to Nicholas. Regarding these words, it is important to note that while the Father was uttering them, he was also attempting to restrain the daughter, lest she treat with others according to her own desires; and in order to achieve this, seized by a sudden excess, he burst forth with the aforementioned words. Somewhat repentant of this excess, he immediately added other words already spoken. In other words: The Father, as if saying to Teresia: "You promised marriage to Nicholas? Keep the faith you gave him; for it is unjust to break faith given to someone; and moreover, have mercy on me, and deliver me from the distresses in which I am held, because you know that my affairs are going badly." More clearly: The repeated words of the Father seem to express a desire for the benefit of his daughter, and for the well-being of himself, his family, and not to impose force upon the will of the same daughter. Furthermore, it is no secret that formulas of speech like these, spoken by parents to their children, and similar things, are to be understood not strictly, but with a grain of salt, as it is said. Indeed, if the Father were to force Teresia to abandon her marriage because his own affairs were going badly, how could he then trample upon his own daughter? All of this is most clearly confirmed by what follows in the sixth response: "For when I was asking for the Church, my niece came to me, saying that she wanted to give me a kiss, before my marriage. Then I was so moved that I wept), thinking about what I was going to do against my will. Those present showed that they understood this. And the father himself said: 'If you must do this by force...' Considering the circumstances, I did not have the courage to embrace a contrary resolution, and I said to my father: 'It is too late to suggest this...' From what has been said so far, does not everyone see that the Father did not intend to impose force upon the will of his daughter, and that Teresia could have withdrawn from the marriage, and yet she did not want to? If he had truly intended to change his own purpose, surely no one would have dared to oppose him. From these words.

[*Latin ed. p. 601*]

FAVENTINA 604 also easily refutes the aforementioned threats made by the father to his daughter, stating that they were made so that the promise of marriage to Nicholas would be steadfastly observed; for, according to a well-known saying: "The promise of a good man is a bond." And consequently, the fear instilled by the father is to be considered not unjustly, but justly instilled, since it is directed towards maintaining the given faith.

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When the Archpriest asked whether she would freely and willingly enter into marriage with Nicholas, she responded that she would, but without serious intention. What could be more foolish than this response? Unfortunate woman, she confesses to her own Parish Priest that she would freely and willingly enter into marriage with Nicholas Vaccari, and immediately she does not blush to assert that she did not do so with a serious intention! All of Teresia's responses, considered under any aspect, truly condemn her. For here we are dealing with external acts, of which the Church judges only; and as they sound, they signify true consent and true freedom. Furthermore, granted, and not conceded, that she may have experienced some repugnance in these acts, would that truly exclude true consent? By no means. For even a merchant casts forth his goods in a transaction with repugnance; and yet he casts them forth with true intention. Thus, also in the present case, the repugnance asserted does not in any way exclude or destroy the true consent externally exhibited to the Parish Priest. Moreover, such consent, especially considering the person involved, is of no small weight: for the faithful are wont to approach their own Parish Priest with complete trust, and to reveal the anxieties of their own hearts to him, so that they may be instructed by him in matters of doubt, or of great importance, and so that they may be guided in their actions. But when the woman says after those words: "I gave my consent, but retaining the same repugnance, and this also happened when I was asked about my consent in the Church, so that I do not know what answer I gave to the Parish Priest who was asking," these words must be carefully noted, for through them it clearly appears that she did not answer the Parish Priest about her consent in the Church, and yet her marriage was blessed, which cannot be supposed. Furthermore, this gratuitous assertion contradicts the preceding words.

[*Latin ed. p. 602*]

602. The aforementioned [woman] openly contradicts [herself]. For, a little earlier, she stated: "I gave my consent with words, but retaining the same opposition." This is the same as if she openly admitted that, before the marriage, before the Parish Priest, and in the presence of witnesses, she had given her consent. Furthermore, the same Parish Priest, when questioned under oath in court, regarding whether the young woman appeared agitated or perplexed while giving her consent, stated that he had not perceived such a thing. The words of the Parish Priest, which either preceded or accompanied the celebration of this marriage, do not contain a single word that seems in any way to undermine [the woman's consent]; nor do they present any suspicion of perplexity or hesitation on the part of the woman in giving the consent requested by the Parish Priest: which clearly indicates that she responded as is customary and proper in such cases. From all of the above, I believe it is evident that Teresia Minzolini gave her consent four times to enter into marriage with Nicolao Vaccari. It is

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irrelevant that she claims to have given her consent with opposition; for such opposition must be considered not absolutely, but relatively: that is, relatively to the sympathy she previously felt for Carolum Grilli, in relation to the proposed marriage of Nicolao Vaccari; which, however, did not prevent her from giving her consent to Nicolao, influenced by the desire for a better economic situation. Furthermore, the aforementioned woman not only gave her consent four times to her marriage, as has been shown from what has been said, but also consummated it in deed. For, as I noted from the beginning, scarcely had the marriage begun, when, immediately, she left her homeland, her father's house, and her relatives, and went voluntarily to the region of her husband, entering his home, and for a period of approximately one month, while living with her husband and sleeping with him, she repeatedly performed the conjugal act, thereby truly consummating the marriage. The same occurred when, having left her husband and returned to her father's house, she received him, and repeatedly performed the conjugal office with him. Nor is it true that she claims to have done this by force; for her assertion is based on no foundation, and indeed, because...

[*Latin ed. p. 603*]

FAVENTINA 603, while asserting that this occurred in the same manner in the paternal home, where she was visited several times by Nicholas and had the same carnal intercourse with him, she presumptuously attempts to demonstrate that her father, or husband, compelled her to fulfill her 'conjugal duty' through force and grave fear: which neither can nor ought to be admitted. Indeed, if the father was pursuing his daughter with ancient affection, forgetting what preceded the marriage, he cared for her illness, and led her to the wedding after she regained her health, etc. Nicholas, however, was not so depraved in character as to forcibly enter the home of his father-in-law, and to have violently and through grave fear, extorted carnal intercourse from Teresia. Nor is it to be heard when she says that Nicholas Vaccari adhered to her without marital affection, because what she says, she asserts gratuitously. If she lived with him for several days in her paternal home, how did she fulfill her duty to her husband? 2. The plurality of conjugal acts against her contradicts this; 3. The affections of the heart pertain to the inner forum, and God alone perceives the heart; but here we are speaking of actions that pertain to the external forum; 4. Because an external act, according to a common axiom, is presumed to be done correctly, that is, as it ought to be done according to law. Therefore, it must be concluded justly and reasonably that Teresia Minzolini not only consented four times to marriage with Nicholas, but also that she consummated the marriage not by force or fear, but spontaneously and freely. Therefore, the following, taken from the aforementioned chapter, is relevant: "A woman is excused from the accusation of marriage who, from the beginning, was compelled to enter into marriage against her will

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and with great fear, and afterwards admitted carnal intercourse." Schmalzgrueber, part 4, title 18. And in our case, although the Oratrix may have been somewhat unwilling at the beginning, she afterwards consented spontaneously, having been captivated by the love of wealth. Then, when it seemed that she was withdrawing from the faith and promise given and accepted, the father justly imposed some threats, so that the faith given to Nicholas would be preserved. If these threats caused some fear in the daughter, that fear must be called justly instilled, and not grave, but rather to be called reverential, not to extort marriage, to which the woman had already given her consent, but to ensure that...

[*Latin ed. p. 604*]

604. The promise of FAVENTINA must be fulfilled. And that fear, which is to be sufficient to annul the marriage, must be qualified, either by importunate prayers and persuasions... or by explicit threats, blows, and repeated and serious circumstances. *Rot. decis.* 301, n. 22, and *decis.* 334, n. 10, part. 11, *rec.* Indeed, the mere persuasion of parents does not invalidate the marriage of their children. *Rot. dec.* 334, n. 11, par. II, *rec.* Furthermore, it must be carefully noted that even if the fear was serious, it was not of the kind ordinarily required to dissolve the matrimonial bond. Conscius, *Lib.* 1, cap. 8, n. 13, says: "However, to annul a marriage, fear must be present and continue during the very act of marriage; it is not sufficient if it occurred only beforehand." *Rot. decis.* 600. Which, in the present case, not only did not occur, but the opposite is found through those words of the father, noted above, when they requested the Church to celebrate the marriage, which words manifestly demonstrate that the father did not intend to instill fear in his daughter, and that she could freely withdraw from the marriage if she truly wished. On the contrary, the testimonies of witnesses, carefully considered, seem to strongly contradict a legitimate and consummated marriage, and, as it seems to me, the situation is not as it appears. Therefore, I believe the following points should be noted to resolve these matters easily. First, it must be observed that the witnesses are moved by a certain natural piety towards the unfortunate Teresia, so that, if possible, provision may be made for her spiritual and temporal well-being through a subsequent ecclesiastical marriage with Charles Grillo: therefore, it is not surprising that they try to present the pressures and the fear instilled in the bride in a particular light, in which the father and mother of the bride are especially distinguished. However, it must be noted that these depositions were taken extrajudicially in an irregular proceeding in the year 1885, and that neither parent was invited to testify in the regular proceeding of the previous year, 1891, nor did either appear spontaneously for that purpose; which is of the utmost importance in the present case, and

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this is obvious to no one.

[*Latin ed. p. 605*]

FAVENTINA 605 Furthermore, just as it is undoubtedly necessary for dissolving a marriage, especially if it has been consummated, to have witnesses of full age, in every instance; so too, it is equally certain that the father should not be included among these witnesses; for it is natural for him to be biased in favor of his daughter, and therefore his testimony is rightly considered suspect. *Reinfest. L. 2. Dec. Titulo 20 Parag. 5.* This is what is most suspicious in the present case, since he is considered to be the primary cause of the entry into such a marriage. Moreover, what the father asserts in the aforementioned testimony is completely contradicted by the daughter herself, when she recounts the words spoken by the father while they were seeking permission from the Church to enter into the marriage. The testimonies of the other witnesses, however, are reduced to these points: 1. that the marriage in this case was entered into for the purpose of gaining profit; 2. that the father made threats to the daughter in order to obtain her consent. We respond to the first point and say that almost all marriages are entered into for temporal gain, and often between people of greatly different ages and social standing; yet, no one would dare to assert that such marriages are invalid. Thus, in the present case, we readily admit that the marriage was entered into for temporal gain; but it must be acknowledged that this occurred on both sides, namely, on the part of the Oratrix and her parents. For they were enticed by the wealth of Nicholas, and they urged Teresia to enter into the marriage in order to restore their own affairs, which were going badly. And she, for the same reason of wealth, gave her consent to the marriage, desiring and hoping for a better economic situation. Regarding the second point, it should be noted that almost all the witnesses are quoted by the Oratrix with these words: "I heard," "I remember hearing"; but they offer no proof, but simply assert what they claim to have heard; and furthermore, they do not adduce any specific fact that would show that, or in our case, that she was ever threatened with beatings, persecution, or other means of coercion. In short, they are only witnesses of hearsay; they are not witnesses of full age, and therefore they do not prove anything.

[*Latin ed. p. 606*]

606. Concerning the admissibility of evidence: According to Laurienus, *Lib. 2, quaest. 612*, and Reiffenst., *L. 2, tit. 20, de testibus, et attestât*, the evidence presented by the mother of the actress on July 10, 1885, was considered sufficient. Furthermore, it must be noted that the present case is of the utmost gravity, for it concerns the dissolution of a marriage that was lawfully celebrated and consummated. As Coscius observes in *de separ. tori, L. 2, Cap. 18, n. 274*, with the agreement of others, in such

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matters, dubious and uncertain proofs, conjectures, and presumptions are not sufficient; rather, proofs that are unequivocal, conclusive, and perfect in their kind are required, as Sánchez states in *L. 3, Disput. 41, n. 4*. The judge must therefore be not merely as if, but absolutely certain that the matter cannot be otherwise; lest what God has joined together be unjustly separated by human error. "And such proofs are presented by witnesses without any exception, that is, by witnesses who are not only suitable or legitimate, but concerning whose testimony no doubt can arise." Laurenius, *Forum Eccl., Lib. 2, Decret, tit. 20, q. 560, n. 2*. It is clear that the witnesses in this case do not meet this standard, except perhaps for one. I refer to the parish priest who blessed the marriage of the woman, whose testimony, as previously shown, does not favor her. Regarding the regularity of this process, there are certain points that a canonist would undoubtedly recognize. Nevertheless, I may briefly mention something, and especially it should not be overlooked that, among other things, only one party appears in court, namely the actress, Teresia Minzolini, for whom the dissolution of her marriage is of the utmost importance. Concerning her husband, Nicolao Vaccari, the following is stated, almost as if read through a partition: "First, the woman was summoned, then the husband, who, after being duly summoned twice, was declared to be in contempt of court." From the procedural records, it is evident that interrogations, summonses, and the pronouncement of judgments were completed within a very short period of time.

[*Latin ed. p. 607*]

FAVENTINA. Therefore, the obstinacy of Nicholas appears to have been exacerbated. For, when investigating a marriage, the spouse who has the right to bring the case must be given sufficient time, as well as due diligence, to present his case: as is evident from various decrees of this Holy Congregation, especially in the Decrees on Matrimony of July 7, 1731, and November 20, 1734, in Milan. These Decrees state: "If, with all due diligence, it cannot be determined where the other spouse, who must be summoned to appear in court, resides, then it is sufficient to publicly announce the summons by posting a notice in accordance with the custom of the doors of the Cathedral and Parish churches, etc., giving the spouse sixty days to appear." It is clear that these Decrees do not address the time within which the process in this case was completed. Furthermore, it should be noted that the woman did not immediately appeal against her marriage, but rather after twelve years, etc., as the Canonist has pointed out. Finally, considering everything mentioned above, it is clear that: 1. The woman gave her consent to the marriage with Nicholas Vaccari; 2. The Father's actions were not intended to extort consent, but to ensure that Nicholas kept his promise; 3. The marriage was consummated freely; 4. The testimonies of the witnesses, which are of dubious reliability, do not provide

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any evidence against the marriage; therefore, it seems to me, both legally and morally, that the marriage in this case is valid, and should be maintained in accordance with the words of Matthew 19: "What therefore God hath joined together, let not man put asunder."

OPINION OF THE CANONIST. The foundation of the matrimonial bond, says the Consultor, and therefore of the Sacrament, is the consent freely and seriously given by the contracting parties; and if this is lacking, then, both by natural and positive law, the marriage is null and void. All theologians and canonists agree on this. Therefore, the mutual consent in marriage must be free from any impediment that would significantly impair full freedom. The reason why the Church desires marriage to be free and immune from any obstacle is to ensure freedom, because the conjugal contract, by its very nature and by divine law, is not...

[*Latin ed. p. 608*]

608. The law of Faventina is rescindable, and therefore it has provided that, in the case of grave fear or coercion, the marriage is null and void; but it requires a free and positive consent, not extorted by force or fear. I confess that, at least to me, this cause appears to be beset by considerable difficulty, since, when the nullity of the marriage is argued based on a lack of consent, that is, on a matter hidden within the heart of the person and known only to God. The court of Faventina, if I am not mistaken, has certainly considered the fear that Teresia claims was inflicted upon her by her father to not have reached the degree that completely destroys necessary consent, provided that the woman herself warned the parish priest, went to church, expressed her consent before witnesses, entered the home of the bridegroom, lived with him for a month, had conjugal relations several times, and remained silent for about twelve years regarding the violence she suffered. Therefore, it is clear that all the essential elements for a valid marriage were present; and therefore, it can be presumed to be valid, unless the contrary is proven. From these facts, some may reasonably conclude in favor of its validity. However, Teresia Minzolini argues against the judgment of the court of Faventina, as we gather both from her examination and from the extrajudicial testimonies of her parents and other witnesses, with which she attempts to refute what has been presented above in favor of validity, under oath, constantly asserting that she entered into marriage through violence and fear, that is, without true and interior consent: therefore, she lacked the will to obligate herself, which is essential to a burdensome contract, such as marriage. Compelled by the judge, she testified that she had felt averse to the bridegroom before the marriage, who had always displeased her, and that she had often told her family and friends that she had been forced to marry; that she had suffered violence and fear through her father's threats and reprimands, used to extort her consent. To these things, Teresia adds the importunate exhortations and urgings of her mother and relatives: be-

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fore the parish priest, she did not express her consent with her voice,

[*Latin ed. p. 609*]

FAVENTINA 609 expressed this in her heart. Having entered the home of her betrothed with great distress, she had carnal intercourse with him, but unwillingly and under duress, never with marital affection. This she testified under oath in court, from which it appears that she was forced by her father, and that, out of great fear, the sixteen-year-old girl entered into the marriage: for, indeed, great fear invalidates marriage. "Marriage," says St. Ligorius, "must be null if it is entered into out of fear; it must be declared null by oneself." But should credence be given to a woman who asserts that she entered into the marriage unwillingly, and under duress and fear? For this concerns a matter hidden within the heart of the person, known only to God; therefore, according to a legal axiom, "an unwilling marriage, knowingly entered into against one's will, is not valid." Indeed, many circumstances favor the woman, which seem sufficient to determine the nullity of the marriage, provided that there is no suspicion of lying, since everything she recounts agrees perfectly with the testimonies of others. But when it is a question of consent, which is internally hidden, proofs can suffice to demonstrate nullity due to this defect, generating moral certainty from the circumstances surrounding the marriage, both preceding, concurrent, and subsequent, which can persuade a prudent man, as Sánchez teaches in book II, district 42, along with other canonists. These circumstances favor Teresia, and suggest that credence should be given to her, provided that all the witnesses testify unanimously that she is incapable of lying: and she herself has always spoken without contradiction about the force and fear that were inflicted upon her by her father. Before going to the church, she was seen in Anzi, agitated and resisting. When she lived with her husband, quarrels, disputes, and contradictions arose. The depositions of the parents, regarding the force and fear used to extort her consent, are affirmed in agreement and with one voice by the Archpriest and the summoned witnesses: they say that they heard that such a marriage was celebrated through force and fear, so that in the entire town, the voice was unanimous about the force that was used. From these, and other testimonies, it is easily gathered in this Act, Volume XXIV, page 36.

[*Latin ed. p. 610*]

610. The marriage lacked true and sincere consent, which is the foundation of the sacred bond; therefore, the marriage was null, both according to natural law and according to ecclesiastical law. It cannot be said that the marriage was validated by cohabitation, since cohabitation does not confer what was lacking from the beginning; moreover, the cohabitation of Teresia with Nicholas was not voluntary, but forced. A more serious objection can be raised from the fact that the bride confessed that she had been

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joined to him once and again: however, this was not done spontaneously and freely, and with marital affection, that is, with the intention of living conjugally, as the actress testified repeatedly in her examination, but by force. As Chrysostom writes, it is not the union that makes marriage, but the consent; therefore, the bride left her husband's house, unwilling to live with him. Having enumerated these points individually in order to declare the nullity of the marriage due to lack of consent, when dealing with a matter that is deeply rooted in the heart, it must be considered whether the circumstances or proofs are sufficient to establish moral certainty, since a metaphysical certainty cannot be had, which would make a prudent man morally certain of the pretended and forced consent. We clearly gather that Teresia Minzolini was married to Nicholas while unwilling and under serious pressure from her father's threats, both from her own sworn testimony, and from that of her parents, and from the unanimous confession of all the witnesses. Therefore, there is moral certainty, as Sánchez and others cited above teach, that this is sufficient to prove the nullity of the marriage due to lack of consent, which is clearly shown to have been extorted by force and fear. Therefore, at least in my judgment, I believe that the judgment of the Faventina court, which ruled in favor of the validity of the marriage, should be overturned and a judgment of nullity should be rendered.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE, BY OFFICE. The marital bond, which Teresia Minzolini, aged 16, entered into with Nicholas Vaccari, aged 33, on October 13, 1873, is being attempted to be dissolved from the year 1885, as if it were contracted under threats from her father. But even if I were to offer exhortations, persuasions, and perhaps even...

[*Latin ed. p. 611*]

Faventina states that 611 *minas* [a unit of weight, here used figuratively to denote a large number] intervened, but I find it difficult to believe that the father ever seriously threatened his daughter. Indeed, in her confessions, it is stated that the father always placed Teresia's desires after the will of God. Certainly, Teresia confesses: that the father said to her, while they were going to the Church to celebrate the marriage; "if you must do this by force..." The words recounted, spoken by the father during the marriage ceremony, clearly demonstrate that the father did not apply any force to his daughter, either before or at that moment. It is therefore clear that it was not Teresia who obeyed her father, but rather the father who obeyed Teresia's will. And this is not surprising: for Faventina, the defender of the sacrament, affirms that Teresia always possessed an extraordinary vivacity, especially at the time of this marriage. Moreover, when Teresia was questioned by the virtuous: "Did you go, as is customary, to the parish priest before the celebration of the marriage, to declare that you freely and willingly entered into the marriage?" she replied: "Indeed, I went, but without a sincere will."

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Again, when asked: "Did you have carnal intercourse with your husband?" she replied: "Sometimes, but always by force." Finally: "When the man came to your house, did you yield to the marital impulse?" she replied: "Sometimes, but always by force." Tell me, I beg you, who is the author of this violence? Certainly not the father: for he was the one who led the daughter to and from the man's house, for his own daughter's sake. Nor the man: for Nicolaus, as soon as he realized that he had an unwanted wife, ceased to visit her. Nor am I moved by what the witnesses brought forth by Teresia report about her reputation. For perhaps the reputation concerned a marriage that was not freely entered into, but not one that was forced. For the parish priest himself heard nothing of this kind. He announced to the people, as is customary, that a marriage was to be celebrated; and not only did no one report any coercion to the priest, but, as the actress says, those present were greatly surprised when the bride burst into tears before the wedding. After what has been discussed by the learned theologian, I believe that those who are causing grief to Teresia's parents, outside of the court of justice, deserve blame. And I am not greatly saddened that not even one, whether from the side of the man or from the duty of a witness,

[*Latin ed. p. 612*]

612. Let Faenza be considered. For, even from those things which we receive from the mouth of the actress herself, it is permissible to argue that the judge of Faenza, with the best of right, declared the marriage of Teresia Minzolini with Nicholas Vaccari to be valid. With these and other things elucidated, the purpose was to resolve the doubt as to whether the sentence of the episcopal court of Faenza should be confirmed or annulled in this case. RESOLUTION. After having considered the Sacred Canons, on the 5th of March, 1892, it was decided to respond: The sentence is to be confirmed. FROM WHICH THESE CONCLUSIONS ARE DERIVED. I. True and serious consent is required in the marriage contract by both natural and positive law; therefore, it must be that the consent is free from any impediment that would impair full liberty. II. Therefore, a marriage contracted under duress and fear is, of itself, null. III. However, in order to annul a marriage, duress and fear must concur and continue in the very act of marriage; it is not sufficient that they occurred beforehand. IV. In this case, these requirements appear to have been lacking; for the father clearly showed to his daughter, who was weeping, and evidently agitated, before the marriage, that he would not use force to compel her to enter into the marriage. V. To dissolve a marriage, especially one that has been consummated, witnesses who are in every respect beyond reproach are required, among whom parents cannot be included, since they are naturally inclined to defend their children. VI. For, due to the reverence owed to the sacrament, it is certain that doubtful proofs and conjectures will be rejected, and only the proofs of witnesses who are in every respect beyond reproach

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will be admitted; these are presented only by suitable, legitimate witnesses, concerning whose testimony no doubt can arise. VII. Likewise, a woman who, from the beginning, entered into a marriage unwillingly and under compulsion, and afterwards admitted carnal intercourse, is to be absolved from the accusation of marriage.

[*Latin ed. p. 613*]

FAVENTINA 613 VIII. In this matter, no witness, nor any appearance, nor any presence, is of greater importance than the parish priest; he who blessed the marriage, and yet does not favor the petitioner; for he who testifies, declares that he knew nothing of the coercion of the father and other relatives. EX 3. CONGREGATION OF BISHOPS AND REGULAR CANONS. A SUMMARY OF EXEMPTIONS AND BENEFITS. The Religious of St. John of God, commonly called Fatebenefratelli, possess a hospice with a public chapel in the city of Ciempozuelos, in the diocese of Madrid, for many years. Since, due to the increasing number of the sick, such a chapel had to be converted into a dwelling for the infirm, the aforementioned Religious requested the Bishop of Madrid, so that he would not refuse to impart the blessing to the new chapel. The Bishop, indeed, granted the request of the Religious, but with the following conditions attached: 1. That the new church should be subject in all things to the jurisdiction of the diocesan Bishop, and that it should not presume to claim any exemptions or privileges proper to religious orders. 2. That the aforementioned church should be subject to the jurisdiction of the parish priest of that place, according to the form of article 25 of the Concordat between the Holy See and the Spanish government, and that the parish priest should be granted the rights and benefits derived from funerals and other religious functions, which constitute his endowment. The Provincial Father, considering that the rights and privileges granted to his Order by the Holy See had been violated by the aforementioned provisions, presented a suppliant petition to the Sacred Congregation of Bishops and Regular Canons, imploring that the aforementioned rights and privileges be preserved in accordance with the form of the papal constitutions.

[*Latin ed. p. 614*]

614. MATTERS OF COMPETENCE. A Synopsis of the Dispute. WHAT FAVORS THE RELIGIOUS. The Provincial maintains, above all, that the hospice of Ciempozuelos is exempt from all jurisdiction of the Bishops; and therefore, that any decree is null and lacks all force, because the privilege of exemption from the jurisdiction of the Bishops has been granted to the Order of St. John of God by numerous Apostolic Constitutions. To demonstrate this, he cites the Brief of Paul V, the Roman Pontiff, in which, in § 10, the Pope expressly commanded the Bishops not to interfere in matters concerning the Congregation of St. John of God: "And, above all,

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we declare and proclaim that they [the members of the Congregation of St. John of God] are to be and remain perpetually exempt from all jurisdiction of the local Ordinaries, and we strictly command and forbid the said Ordinaries, even if they are adorned with the honor of the Cardinalate, to henceforth interfere or meddle in any way in those matters which concern the observance, discipline, and regular institutions of the aforementioned Congregation of St. John of God." Urban VIII also concurred, who, in the Brief *Cum Sicut*, commanded the Ordinaries not to interfere in those convents and hospitals in which there were twelve Religious, decreeing thus: "By Apostolic authority, by these presents, we declare and decree that, with regard to the convents and hospitals of the aforementioned Congregation, in which there are twelve Religious, the Bishops shall in no way interfere." However, with regard to those hospitals in which the number of Religious was fewer, he decreed that the Bishops, together with the Superior of the same hospitals, could proceed to the review of accounts and administration: "And with regard to those convents or hospitals in which there is a smaller number of Religious, the same Bishops may, together with the Provincial or another superior of the same Congregation, proceed to the review of accounts and administration."

[*Latin ed. p. 615*]

"Furthermore, hospitals are to proceed in such a way that they do not, in any way, interfere with individuals. From this, it follows that whenever Bishops have dared to challenge such rights and privileges, the same have been consistently recognized and confirmed by the Roman Pontiffs. As confirmation of this, he cites the example of Urban VIII, who ordered the Bishop of Massena not to pretend to visit the hospital of the town of Plumbini and to subject its accounts to examination. Indeed, he adds that the same Pontiff decreed that the hospital of the City of Vetula should not be subject in any way to the jurisdiction of the Ordinary, even though twelve brothers of that Congregation resided there. Therefore, since it is clear from what has been stated so far that the hospitals of the Religious Order of St. John of God are exempt from the jurisdiction of the Ordinary, it spontaneously follows that the hospital of the place of Ciempozuelos, which is exempt from the jurisdiction of the Bishop of Matriten, should renounce this exemption; not only because such a hospital house belongs to the Order of St. John of God, and was established according to the model of the other hospitals of that Order; but also because more than eighty Religious reside there. After this, proceeding to another point of contention, the Provincial Father argued that the aforementioned hospital is so exempt from the jurisdiction of the parish priest that it is the hospital itself, and not the parish priest, that has the right to bury and to receive the emoluments from those who die in said hospital. And this is in accordance with the force of the Brief of the Most Holy Pope Pius V, our Savior, in whose § 9,

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concerning the hospital of Granada, the following is written: "Moreover, we perpetually exempt and completely free the hospital, and its church, altars, and chapels, from all manner of jurisdiction and superiority of the aforementioned and of any other parishes or churches, and of their rectors and benefactors, with regard to the collection of alms, offerings, and other rights and revenues, including funerals, which come to the aforementioned hospital." Such privileges and exemptions were granted by the Most Holy Pope Pius V."

[*Latin ed. p. 616*]

616 In Granada, certain privileges were granted to the hospital, by Gregory XIII, through a Bull. In the aforementioned Bull, § 14, it is stated that on the twenty-eighth of April, in the year 1576, these privileges and exemptions were extended to and applied to all hospitals of St. John of God. Furthermore, the Provincial Father adds that Sixtus V, then the Brief of St. Pius V, and also the Bull of Gregory XIII, confirmed that such privileges, rights, and exemptions should be granted with greater force. Moreover, he observes that Gregory XIV, in addition to the privileges, rights, and exemptions mentioned above, granted to all hospitals of St. John of God, both in Italy and outside of Italy, the same privileges, immunities, and exemptions that are proper to the Archihospital of St. Spirit in this city. These privileges and immunities granted to the Archihospital of St. Spirit consisted in the fact that the Rectors of the aforementioned hospital were not only not obliged to pay the fourth penny to the parish priests, but were also exempt from the obligation of paying taxes, dues, and other burdens. He affirms that this was done with the best of right, because, as wisely observed by Cardinal de Luca, in *Disputationes de Parochiis*, XXIII, § V: "These hospitals are exempt from the jurisdiction of the parish priests, because he who is of the same order, or is otherwise deputed to administer the sacraments to the sick, is in the place of a parish priest, and the hospital itself is said to have a separate territory within its bounds, and with regard to those who live there, it constitutes a certain kind of parish, distinct and standing alone." Therefore, it is not surprising that, whenever such rights and privileges have been called into question, they have been consistently confirmed by the sacred tribunals, and disputes arising between the Religious of St. John of God and the parish priests have been decided in favor of the Religious. Thus, it is read that a dispute arose between the Hospital of St. John of God in Orbitelli and the Collegiate Church of the same place, which was decided by the Tribunal A. C. on July 6, 1707; and another dispute, on August 8, 1714, between the same Religious.

[*Latin ed. p. 617*]

MADRID. 617, and born in Montisalto, daughter of the Archpriest. She cites a decree of a special Congregation convened by the Most Holy Pope

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Clement XI in Rome, concerning funeral matters and parochial rights, issued between the parish priest of Saint Lawrence in Lucina and the Hospital of Saint Charles on the Corso, dated January 8, 1717. She also cites the decree of the Reverend Father Delegate for the Convent and Hospital of Saint John of God against the parish priest of Saint Blaise in Via Giulia, promulgated on April 11, 1764. The document mentions a decree issued by the Cardinal Vicar on February 8, 1879, against the parish priest of Saint Bartholomew on the Isola. Finally, it cites a decree of the Sacred Congregation of the Council issued on June 11, 1891, in Milan, concerning funeral matters and emoluments against the parish priest of Saint Victor. With these precedents established, the Provincial Father observes that the difficulty arising from article 25 of the Concordat must not be disregarded. Since the first part of the aforementioned article 25 does not concern canonically erected religious communities, but rather properly called parishes, or perpetual vicars, which were previously fully annexed to a religious community, the second part of the same article speaks only of churches or chapels, and of secular clergy, who do not belong to religious communities. Therefore, it is clear that the local hospital of Ciempozuelos belongs to the Congregation of Saint John of God. The Provincial Father concludes that the aforementioned hospital should be granted and enjoy the same rights and privileges that have been granted to all other hospitals by the Roman Pontiffs; therefore, it should be granted the right to perform funerals in its own church, independently of the parish priest, as well as the right to receive its own emoluments. WHAT IS OPPOSED TO THE RELIGIOUS. On the other hand, the Bishop of Madrid, first of all, denies that the local hospital of Ciempozuelos is exempt from the jurisdiction of the Ordinary. This, he argues, can be inferred from article 29 of the Concordat between the Holy See and the government of Spain, according to which, with the exception of the Institutes of Saint Philip Neri and Saint Vincent de Paul, and others...

[*Latin ed. p. 618*]

618. Those [religious] houses which are dedicated to works of charity or spiritual exercises, or which assist parishes, are to be considered as such, and therefore, like residences and private houses, they are not endowed with the privileges and exemptions granted to religious Orders to which they belong. Therefore, since the Hospital of St. John of God, established in the city of Ciempozuelos, is not to be considered a religious institution according to the provisions of the Concordat, the Bishop concludes that it is not possible to grant to said Hospital the exemptions and privileges that were granted to the Order of St. John of God, to which it belongs. But, he says, how can one object to this, when the Most Holy Pope Pius IX, in that very Bull, *Quae diversa*, suppressed all jurisdictions, except for the proper jurisdictions of Regular Prelates? Moreover, he observes that

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canonical authors, among whom he cites the Bishop of Leon and Vincent of Lafuente, in their ecclesiastical works, teach that the aforementioned jurisdiction of the Prelates is to be understood, according to article 11 of the Concordat, only with regard to the manner of life that the Religious lead within the cloister. And this doctrine, according to these authors, is confirmed in their works, which are entitled *Ecclesiastical Procedure*, where, when speaking of Regular Prelates, they express themselves as follows: "Regular Prelates exercise no external jurisdiction, but only within the cloister, with regard to their subjects, and in criminal matters, in cases prescribed by the Council of Trent. In other matters, they enjoy no exemption, but are dependent on the local Ordinary; Regular Prelates, however, only intervene in those matters which concern the spiritual and interior life of the Religious." As for the question of the emoluments received on the occasion of the funerals of those who die in the Hospital of Ciempozuelos, the Bishop argues that, whether for reasons of equity or justice, these should not be given to the Religious residing in said Hospital, but to the Parish Priest and Economus.

[*Latin ed. p. 619*]

MADRID. 619 Primariamente, considerações de equidade exigem isso, pois, por um lado, a pensão atribuída ao Pároco Administrador pelo Concordato é extremamente inadequada; por outro lado, o hospital local de Ciempozuelos está repleto de riquezas. Certamente, não há como duvidar que a pensão atribuída ao Pároco Administrador é extremamente inadequada; visto que o Bispo afirma que, além de ter sido reduzida nos últimos 15 anos, primeiramente em 25 e depois em 10 *libellis* por cada cem, ela se tornou ainda mais inadequada devido à própria ação da autoridade civil, que concedeu aos Párocos Administradores apenas dois terços da pensão destinada aos Párocos titulares. Portanto, se fosse admitido que o hospital local de Ciempozuelos não deveria pagar ao Pároco Administrador os salários daqueles que morrem no referido hospital, isso resultaria na falta do que é absolutamente necessário para a própria subsistência do Pároco Administrador. Por outro lado, o fato de que o hospital está repleto de riquezas é confirmado pelo próprio Bispo, que afirma que o hospital dispõe de uma grande quantia de dinheiro, pois quase todos os enfermos que são recebidos ali pagam uma diária. Para os enfermos que são oprimidos pela pobreza, a Deputação Provincial paga a diária na medida e quantidade que são geralmente estabelecidas pela própria Deputação Provincial, juntamente com o Diretor do hospital. Além disso, o Bispo afirma que uma consideração de equidade semelhante foi aceita pelo próprio Diretor do hospital, que, portanto, informou ao Bispo em 14 de agosto de 1890 que estava disposto a reembolsar ao Pároco Administrador os direitos de sepultamento na quantia que o Bispo desejasse designar para os enfermos necessitados que tivessem falecido no hospital. Além das considerações de

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equidade, o Bispo argumenta que tais pagamentos são devidos ao Pároco Administrador por uma razão de justiça, pois o Concordato de 1851, ao qual se deve conformar a presente controvérsia, no artigo 25, prescreve que as Ordens regulares existentes na Espanha devem depender de seu próprio Pároco e devem pagar-lhe os devidos pagamentos.

[*Latin ed. p. 620*]

620. MATRITEN. And from this legal arrangement, a consistent practice has arisen in Hispania, whereby hospitals or infirmaries, and any charitable institutions, even if administered by religious communities, are subject to the jurisdiction of the proper parish priest, and they themselves must pay the rights and emoluments pertaining to funerals. And this is rightly so, as the Bishop observes, because, in the salary assigned to the parish priest by the Concordat, the rights of the altar, or *stolae*, are included, which the priest customarily receives from his parishioners for marriages, baptisms, and funerals. And these rights, which, according to the practice prevailing in Hispania, constitute a part of the salary due to the parish priest, represent a significant loss in the present situation, in the case where the parish priest of the city of Ciempozuelos would have to deny emoluments to the sick, who die in that city's infirmary, since the Bishop observes that these sick are subject to the parish priest's jurisdiction. Indeed, the Bishop insists, in accordance with the aforementioned Concordat, not only the sick who die in the infirmaries of Regular Canons or hospitals, but also those same religious communities, in the death of one of their members, pay the funeral rights and emoluments to the proper parish priest, even though, by virtue of Apostolic Constitutions, they enjoy privileges and exemptions, even greater ones, which have been granted to the Religious of St. John of God. And all religious communities existing in their diocese must adhere to this practice, which has the force of law throughout Hispania, without any opposition. Having considered these matters from both sides, the following questions have been proposed:

I. Are the Religious of St. John of God residing in the infirmary of the city of Ciempozuelos exempt from the jurisdiction of the Bishop of Matriten in the case of funerals?

II. Is the infirmary for the demented in the locality of Ciempozuelos exempt from the jurisdiction of the parish priest in the case of funerals?

III. Are the emoluments pertaining to funerals due to the same parish priest?

[*Latin ed. p. 621*]

Concerning the needs of the infirm, and the matter of the hospital: 621 who die in the aforementioned hospital. After mature discussion within the Sacred Congregation of Bishops and Regulars, on the first day of April, 1892, it was decided to respond as follows:

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I. Affirmative.

II. Affirmative.

III. Negative, and furthermore.

FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. The Congregation of Saint John of God is exempt from all manner of jurisdiction of the local Ordinaries, according to the Brief of Paul V, Roman Pontiff; thus, Bishops, even if they hold the honor of the Cardinalate, cannot interfere or intrude in matters concerning observance and discipline.

II. Such privileges and exemptions were confirmed by Urban VIII, in the Brief "Cum Sicut," concerning the convents and hospitals of the aforementioned Congregation, in which twelve Religious live.

III. However, concerning those convents or hospitals in which there is a smaller number of Religious, the Bishops, together with the Superior of the same Congregation, may proceed to review the accounts and administration; but in such a way that they do not interfere in any way with the individuals themselves.

IV. Indeed, the hospital of the City of Vetula, in virtue of the Brief of Urban VIII, – for the sake of future remembrance – is exempt from the jurisdiction of the Ordinary, even though there are not assigned there twelve brothers of the aforementioned Congregation, nor do they actually reside there.

V. The hospital of Granada, and its church and altars, are perpetually exempt from the jurisdiction of any parochial rectors, according to the Brief of Saint Pius V, "Salvatoris Nostri," with regard to the collection of alms, offerings, dues, and even funeral expenses, which accrue to the aforementioned hospital.

VI. Soon after, the aforementioned privileges and exemptions granted to the hospital and church of Granada by Saint Pius V, were then extended by Gregory XIII, then by Sixtus V, and finally by Gregory XIV, to all hospitals and churches of the Order, both within and outside of Italy.

[*Latin ed. p. 622*]

622 MATRITEN, VII. These institutions are exempt from the jurisdiction of the parish priests, because (from Lucca, Disputation XXIII, V, concerning Parishes) he who, from the same Order or from another, is appointed to administer the sacraments to the sick, is considered in the place of the parish priest, and the hospital itself is said to have a separate territory within its scope, and those who live there constitute a certain kind of parish, distinct and standing alone. FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, LETTERS from the Prefect to the Ordinaries of North America; in which the decree concerning the conven-

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tion initiated by the Archbishop of St. Paul, regarding two parish schools, is communicated, which did not appear to be in accordance with the Instruction issued in the year 1875. Most Reverend and Most Eminent Lords, Your Eminence knows well that, recently, a question concerning the establishment of a Catholic youth organization has been raised in this Republic of the United States. This discussion was occasioned by a certain convention initiated by the Archbishop of St. Paul, concerning two parish schools located in the towns of Faribault and Stillwater. It is well known that the Holy See has always watched over, with the greatest solicitude, that youth be imbued with wholesome doctrine and protected from harmful influences; and this very Congregation, having long since turned the eyes of its vigilance to this region, took care to have an Instruction drawn up concerning public schools, beginning in the year 1875. (1) Adhering to this, the Fathers of the Third Plenary Council of Baltimore devoted all their care to ensuring that Catholic youth be kept safe from all taint of vice and error, and be defended from the dangers of an education lacking in the principles of faith and morals. Therefore, they prudently decided to include [this matter] in the [Council's] deliberations.

(1) This Instruction is referred to in Volume XI, page 44.

[*Latin ed. p. 623*]

From the Sacred Congregation for the Propagation of the Faith, 623 dioceses were instructed to establish a school near each church, in which Catholic youth should be instructed, under the authority and direction of ecclesiastical pastors, not only in letters and liberal arts, but also in religion and good morals. However, some, having these most wise statutes before their eyes, judged that the method of acting of the Archbishop Paul in the aforementioned two cases could not be reconciled with them, and did not hesitate to reproach him; while others, on the contrary, considered it worthy of praise for weighty reasons, and judged that nothing had been derogated from these decrees by it. Hence, a sharp contention arose: and, which is very regrettable, this question was vehemently discussed even through public newspapers, and there was not a concordant and unanimous judgment of the Bishops on this matter. Since it could rightly be feared that this would greatly harm the good of religion, the decorum of the Church, and the most desired and necessary harmony among the sacred prelates, in which the peace of the flock entrusted to them is strengthened, the Holy See considered it opportune to take up the matter and to impose an end to the discussions with its judgment. The examination of this matter was entrusted to some from among the Most Reverend Fathers of the Christian Council, Prefects of the Congregation for the Propagation of the Faith, who, after mature and diligent investigation in the meetings held on April 21st of this year, having carefully considered all that had been done by the Archbishop Paul, with attention to the

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particular circumstances and also to the manner and agreements by which the convention was initiated, judged that the following decree should be issued, which was approved on the same day by the Supreme Pontiff: "Since the decrees of the Councils of Baltimore concerning parochial schools, the convention initiated by the Reverend Father John Ireland relating to the schools of Faribault and Stillwater, having considered all circumstances, may be tolerated." Taking this opportunity, the Most Reverend Fathers earnestly recommended to the Venerable Bishops of the United States to continue, as they had done up to now, with the same concordant zeal to promote the salvation of souls entrusted to them and the good of religion, by which they have already, with God's help, honored their name in the Christian republic. Indeed, this...

[*Latin ed. p. 624*]

624 From the Sacred Congregation for the Propagation of the Faith: The union of souls and the strengthening of faith must be fostered and guarded all the more, especially now, when errors spread unchecked, and when we must contend with numerous enemies, and overcome countless difficulties and obstacles from every side. Furthermore, the Fathers also desired that in the Assemblies which will be held among the Archbishops of the Federated States, they diligently consider the means by which the greatest number of Catholic children, who, according to reliable accounts, attend public schools instead of parochial schools, may be provided for. Since the pastoral concern and the ardent study of religion, with which the Pastors of this vast diocese are imbued, have been clearly presented to the Sacred Congregation, the latter is certain that they will devote all their efforts to finding the most suitable remedies by which these evils may be effectively addressed. Moreover, it is not at all doubtful that, with filial devotion towards the Apostolic See, they will, with any differences of opinion set aside, constantly strive, with a united will and with concordant minds, to safeguard and promote the Catholic name. In the meantime, I sincerely pray for all blessings from God for you. Given in Rome, from the offices of the Sacred Congregation for the Propagation of the Faith, on the 3rd of May, 1892. Your most devoted servant, MIECISLAUS CARD. LEDÓCHOWSKI, Prefect. To IGNATIUS, Archbishop of Tamiathen, Secretary.

[*Latin ed. p. 625*]

625 FROM THE SACRED CONGREGATION OF THE ROMAN INQUISITION: Questions concerning the constitution of the Apostolic See. I. Whether those who knowingly read publications, bound in volumes, which have a heretical author and promote heresy, incur excommunication, concerning which the Apostolic Bull of the Apostolic See of October 12, 1869, in the section concerning excommunications reserved to the Roman Pontiff in a special manner, article 2. II. Whether by acts issued by the Holy

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See, are only those acts understood which originate directly from the Holy Father, or also those which originate mediately from the Holy Father, or also from the Sacred Congregations? III. Whether those who absolve a complicit in a scandalous act, with crass and manifest ignorance, incur this excommunication, or not? IV. Whether those who collect alms of greater value for the poor, if they cause them to be distributed in the same place where they were collected, at a lower value, incur this censure, or not? V. Whether a cleric who has been ordained, or a religious, or a monastic, if, besides the impediment of the solemn vow of chastity, he has other impediments, e.g., of affinity or consanguinity, incurs this censure, or not? VI. Concerning the absolution of special censures, it is doubted whether, in articulo mortis or in danger of death, if the sick person recovers and does not fulfill the obligation of presenting himself to his Superior, he falls again into the same excommunication, or not? On Thursday, January 13, 1892. In the general Congregation of the Holy Roman and Universal Inquisition, held before the Most Eminent and Reverend DD. Cardinals, general Inquisitors, after the aforementioned questions were proposed, and after the vote of the DD. Consultors, the same Most Eminent and Reverend DD. ordered that the following be written: To I. Affirmative. To II. Negative regarding the first part; affirmative regarding the second. Acts, Vol. XXIV, page CGLXXXVI 40.

[*Latin ed. p. 626*]

626 FROM THE SACRED CONGREGATION OF THE INQUISITION. To the Third [Party]. In the case, [it is] to be considered. To the Fourth [Party]. Affirmative to the first part; negative to the second. To the Fifth [Party]. [It is] to be considered. To the Sixth. Let the Decree be given concerning the following doubts, according to the Decree of August 19, 1891: - 1. Whether the obligation of observing the mandates of the Church, imposed by the Apostolic Bull, is under penalty of relapse, or not? 2. Whether the obligation of observing the mandates of the Church, in the sense of the Apostolic Bull, means the same as the obligation of submitting oneself to the Holy Father, or whether it ought to be distinguished from it? Answer: To the first [question]. Affirmative to the first part; negative to the second. To the second [question]. The obligation of observing the mandates of the Church implies a burden, either intrinsically or through recourse to the Holy Father through a confessor. Furthermore, on the fifth day of January, 1892, after these matters had been reported to the Most Holy Lord Pope Leo XIII by the Reverend Father Assessor of the Holy Office, His Holiness approved and confirmed the aforementioned resolutions. From the Chancery of the Holy Office, on January 16, 1892. I. MANCINI, Secretary of Rome and

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of the University, Notary.

[*Latin ed. p. 627*]

627 APPENDIX III. EXHIBENS ACTA SEDIS APOST.; QUAE AUT IAMDIU EXARATA SUNT, AUT QUAE TEMPESTIVO LATUERUNT EPHEMERIDUM MODERATOREM.

S. C. Immunitatis, 20 Septembris 1860 — De privilegio fori clericorum.

Clericus, qui nondum maiores suscepit Ordines, sive coniugatus sit sive non, cum, quod ea quae Sacrum Concilium Tridentinum, Sessio 23, Caput 6, de Reformatione disposuit, diligenter non observaverit, privilegium fori amittit, habendus est uti destitutus atque ipso iure et ipso facto destitui omnibus clericorum privilegiis, ita ut haberi tractarique debeat tamquam persona vere laica, etiam in causis criminalibus et ad effectus poenales, quin iam nunc ac deinceps triplex admonitio, sive peculiaris declaratio incidentiae in hanc poenam sit necessaria.

8. Congregatio de Propaganda Fide — C. Gen. 17 Maii 1860. De recursu clericorum ad iudices laicos.

Declarat Sacra Congregatio numquam sese fore admissuram recursionem vel appellationem sacerdotum, qui ad iudices laicos trahere ausi fuerint vel clericum sine venia Ordinarii, vel Episcopum sine venia Apostolicae Sedis, sive in causa ecclesiastica sive non, nisi prius recursionem ad civile tribunal interpositum deseruerint. Episcopi vero, iuxta declarationem Capitis Cogentes a Suprema Congregatione Inquisitionis dies 23 Ianuarii 1886 (1) editam, possunt in praedictum clericum animadvertere poenis et censuris ferendae sententiae, maxime suspensione a divinis, servatis tamen servandis, et pro gravitate causae, si id expedire in Domino iudicaverint. Quod si venia conveniendi clericum in forum laicorum ab Ordinariis petatur, ipsi nunquam eam denegabunt, tum maxime cum ipsi controversiis inter partes conciliandas frustra operam dederint.

(1) Declaratio haec relata fuit Vol. XVIII, 416.

[*Latin ed. p. 628*]

628 APPENDIX III. Sacra Congregatio de Propaganda Fide – Congregationis Generalis, 6 Septembris 1886. De clerico cedenti sua iura laico. Si clericus volunt ecclesiastica sua iura laico cedere, ut laicus sibi iura ecclesiastica propria cedere velit in alio, debeat veniam Episcopi mandare; et, si controversia orta sit contra presbyterum, debeat ab Episcopo, si litis causa sit ad Sacram Sedem; et, si non faciat et obtineat, subiicitur dispositionibus emanatis adversus presbyteros recurrentes ad iudices laicos, et habetur quasi agens in fraudem legis.

Sacra Congregatio de Propaganda Fide – Congregationis Generalis, 2 Martii 1666. Dubium quoad regimen Praefecti. Si Praefectus possit continuare in governo Missionis usque ad adventum successoris, quamvis termi-

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nus suarum facultatum cesserit.

R. Praefectus maneat in governo Missionis usque ad adventum successoris, qui a Sacra Congregatio destinatus et approbatus fuerit.

Sacra Congregatio de Propaganda Fide – Congregationis Generalis, 13 Ianuarii 1682. De Praefecto quoad privilegia communicanda. Si Praefectus communicare possit propria privilegia missionario qui tempus in scripto nella sua patente absolverit, quin eius patente prorogatio aut confirmationem petierit.

R. Affirmative, dummodo missionarius maneat in Missione.

[*Latin ed. p. 629*]

APPENDIX III. 629 Sacred Congregation of Propaganda Fide, October 2, 1724. Concerning Missionaries established by the Apostolic See and subject to Prefects. Since it has become known to this Sacred Congregation that in certain missions, a pernicious and entirely erroneous opinion has taken hold, namely, that missionaries, because they are institutions established by the same Sacred Congregation, which also establishes Prefects, are not subject to them, but are their associates, and therefore, since equals have no authority over equals, they are not obligated to obey their precepts: The Holy Fathers have declared that this abuse and this false opinion must be completely eliminated, and have decreed that missionaries are truly subject and are obligated to obey their local superiors, even in matters of transit, and that these superiors, and those subject to them, are subject to the Prefects; the Prefects, in turn, and all others are subject to the General Procurator of the Order and to the Sacred Congregation. Decree of the Sacred Congregation of Propaganda Fide, July 24, 1626. Concerning the presentation of letters by missionaries to superiors regarding missions. Whereas the Sacred Congregation has certainly learned, to its great concern, that Superiors of Regular Orders in the Eastern regions, under various pretexts, and especially by reason of the ordinary jurisdiction and the privileges granted to them by the Apostolic See, are causing many obstacles to missionaries, whether sent by them or by others with their authority, to carry out their work in those regions; and that, terrified by this, not only do these missionaries cease from their duties, but they are even compelled to abandon the places assigned to them; and also considering that the missions to the Eastern regions are undertaken in vain, at such expense, labor, and peril, if the missionaries are hindered in the execution of their office, or are removed from the places to which they are assigned; after considering the report of the Most Reverend Cardinal Marcomonti, it was decided that all missionaries, whether secular or regular, of any Order, Institute, Congregation, or Society, whether established by them or by others with their authority, and destined or to be destined for the aforementioned regions, should present to the aforementioned Superiors, or their Vicars, or Ministers, even those who possess ordinary power by

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virtue of the privilege of the Apostolic See, the Letters Patent of their mission, so that, whether these Letters are shown to them or obtained from them, or not obtained from them, they may freely and lawfully perform their office and duty. Finally, it was decided that it should be ordered, as this present decree strictly commands, that the aforementioned Superiors and their Vicars and Ministers should not, in any way, dare to hinder the aforementioned missionaries after these Letters Patent have been shown to them.

[*Latin ed. p. 630*]

630 APPENDIX III. lest they may be able to exercise their office and persevere, otherwise, according to the measure of their fault, they will be severely punished by the Most Holy Lord. Sacred Congregation for the Propagation of the Faith – C. G. August 15, 1630. Concerning the faculties of missionaries on their journey. It frequently happens to missionaries on their journey, whether by water or by land, that, due to the lack of other priests, they are compelled to hear confessions, or to accompany travelers, or even the inhabitants of those regions through which it is necessary to pass, in order to transfer themselves to the places of their mission; therefore, they desire that the Sacred Congregation declare whether, with the faculties granted to them for mission lands, they may use them in the aforementioned cases that occur on their journey. The Sacred Congregation declared that it is not permitted for missionaries to use the faculties granted to them outside of Szaz-Regen or provinces or places to which they have been assigned. Sacred Congregation for the Propagation of the Faith – C. P. May 7, 1631. Concerning missionaries with regard to the use of their faculties. 1. Whether missionaries (in the East) should request permission from Bishops whom the missionaries consider to be Catholic, for the use of their faculties. 2. Whether missionaries may celebrate in the churches of schismatics, and whether they may use their priestly vestments and chalices. R. To 1. Affirmative, if there is such certainty of their right faith, that it excludes all suspicion of schism and error prevalent in those parts. To 2. Negative, because missionaries are given the use of a portable altar and the faculty of blessing vestments, and therefore it is not necessary for them to celebrate in the aforementioned churches or to use the aforementioned vestments. Sacred Congregation for the Propagation of the Faith – C. G. April 2, 1640 (before the Most Holy). Concerning the time when the faculties of missionaries expire. In response to a question from Father I., the Most Holy Lord said that the time of the faculties granted to him should be calculated from the day of their reception, and not from the day they were given.

[*Latin ed. p. 631*]

APPENDIX III. 631 Sacred Congregation for the Propagation of the Faith

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– Regarding Missionaries and the exercise of their faculties. Decree of 26 April 1647. Missionaries are to have a clause regarding their faculties, such that they cannot administer the Sacraments within the districts of Bishops or parish priests without their permission, whereas the remaining duties may be performed after having shown their faculties to the aforementioned Prelates or parish priests, which they must do as soon as they arrive at the locations of their missions, and they should not be hindered by the aforementioned Prelates or parish priests. Sacred Congregation for the Propagation of the Faith, 14 February 1702. Regarding the administration of the Sacraments by Missionaries. It is not permitted to secular or regular Missionaries, including those of the Society of Jesus, even by virtue of their privileges, to administer the Sacraments or perform other parochial duties, unless with the permission of the Ordinaries or Vicars Apostolic in whose respective provinces or dioceses those Missionaries happen to reside. Sacred Congregation for the Propagation of the Faith, 27 February 1704. Regarding the departure of a Missionary from his assigned mission. Whereas the Sacred Congregation, under the date of 13 March 1668, ordered apostolic Missionaries not to depart from their mission unless they have previously obtained permission from the same Sacred Congregation to return, even if they have fully completed the time of residence in the mission according to its decrees, which is not considered to expire, and this time of travel is not included; the same Sacred Congregation declared that the aforementioned Missionaries may exercise their faculties until they obtain confirmation of their mission, or a license as mentioned above, to depart from the mission, even if the time of their faculties has expired. Sacred Congregation for the Propagation of the Faith – Decrees for the Synods, 13 January 1766, Chan-si and Chen-si. Regarding the removal of Missionaries. 1. Whether Missionaries assigned to a particular district or territory are to be considered as parish priests. Assuming that they are considered as parish priests, it is asked whether they enjoy the rights of parish priests and whether they can be removed to another place.

[*Latin ed. p. 632*]

632 APPENDIX III. Concerning the district and its missionaries. 1. Whether the Vicar Apostolic can, for any reason, even a minor one, assign a missionary to a different district at his own discretion. 2. Whether a newly arrived missionary is obligated to personally approach the Vicar Apostolic to request the necessary faculties, even if doing so would cause him great inconvenience and danger.

Answers: 1. The Vicar Apostolic can change the assignments of missionaries for a just and reasonable cause concerning the good of the mission. 2. It is more expedient that the Vicar Apostolic grant faculties to missionaries, even by letter or through messengers, when it is very difficult for them to personally approach him, in order to avoid expenses, the dangers of travel,

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and other very serious difficulties. However, the Vicar Apostolic can, for a just and reasonable cause, in certain particular cases, order the missionaries to appear before him to obtain the faculties.

From the Instruction of the Sacred Congregation for the Propagation of the Faith, January 4, 1726, concerning missionaries of religious congregations regarding the examination for the administration of the sacraments. If (Bishops) were to claim to examine them before they administer the sacraments, because the words "examined and approved" are not present in the official documents, they should respond to these Bishops that having been approved as missionaries is the same as having been approved for the administration of the sacraments, since the office of the missionaries for which they were approved consists precisely in preaching and administering the sacraments. If (Bishops) were to presume to subject these missionaries to an examination before they administer the sacraments, because the words "examined and approved" are lacking in the official documents, they should respond to these same Bishops that being approved as missionaries is the same as having been approved for the administration of the sacraments, for the office of the missionaries, for which they were approved, consists most strongly in preaching and administering the sacraments.

Sacred Congregation for the Propagation of the Faith – Secret Correspondence for the Synods, September 20, 1821. Vicar Apostolic of Sutchuen. Concerning the faculties for missionaries condemned to exile. 1. Whether the Vicar Apostolic can grant to missionaries of his district, who are condemned to exile in foreign provinces, ordinary and extraordinary faculties, so that they may exercise them in the places of exile.

[*Latin ed. p. 633*]

APPENDIX III. 633 2. Whether, to missionaries expelled from their missions, powers other than those obtained from their own Vicarius Apostolicus are granted by the Apostolic See itself, as powers granted to Apostolic missionaries, especially if it is not certain that those places are subject to another Bishop, or if, due to excessive distance or another impediment, they cannot appeal to that Bishop. 3. What are these powers, and how should they be exercised, considering that they are usually granted only for a period of two years or another specified time.

R. To 1. Affirmative; but they cannot be exercised except with the permission of the Ordinary, or because of the most difficult access to the Ordinary of the place, or because of the absence of the same Ordinary. To 2 and 3. See the provision in the first. Sacred Congregation for the Propagation of the Faith – Secret Chamber. December 1838. Eastern Ordinaries concerning Latin missionaries. 1. Whether Patriarchs and Eastern Ordinaries can forbid Latin missionaries from administering the Sacraments and exercising their powers in churches subject to them. 2. Whether missionaries can

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administer the Sacraments and exercise those same powers towards the Eastern faithful in Latin churches without the consent of Eastern Ordinaries. 3. Whether Patriarchs and Eastern Ordinaries can forbid their subjects from receiving the Sacraments from Latin missionaries.

R. To 1. Let the Decree of April 26, 1647 (which you have on page 631) be given. To 2. Negative, with regard to parochial matters, according to the Decree of April 26, 1647; in other cases, affirmative, unless the difference in the rite of administering the Sacraments presents an obstacle, and the Decree of January 31, 1702, is observed. To 3. See the provision in the preceding. Sacred Congregation for the Propagation of the Faith – Secret Chamber. April 12, 1646. Missionaries during times of persecution. Whether, when persecuted by heretics with the danger of death, missionaries should remain in their missions.

R. During times of persecution, the presence of pastors is more necessary so that the faithful are not perverted.

[*Latin ed. p. 634*]

634 APPENDIX III. Sacred Congregation for the Propagation of the Faith — Council of General Congregations, February 6, 1882. Concerning the Subjection of Missionaries to Apostolic Vicars. Missionaries belonging to the secular clergy, who are assigned to missions by authentic letters from the Apostolic See, are subject in all respects to the jurisdiction, visitation, and correction of the Apostolic Vicars. Regular clergy, however, who enjoy the privilege of exemption, are likewise subject to these Apostolic Vicars in all matters pertaining to the care of souls, the administration of the Sacraments, and in other cases expressly specified by law.

Sacred Congregation for the Propagation of the Faith, December 18, 1662. Concerning Disputes of Missionaries with Heretics. The General [Capuchin] is warned that he must absolutely prohibit all conferences and public discussions or debates of missionaries with heretics, since the Holy See has always prohibited such gatherings, having learned from numerous experiences that they are harmful; and that any intervention in the sermons of heretics is likewise to be prohibited, as it has always been prohibited by the Most Holy Congregation, and is not permitted to all without exception; however, if someone of greater doctrine and prudence is present, he should petition in particular for permission.

Sacred Congregation for the Propagation of the Faith, November 23, 1665. Concerning Commerce to be Conducted. Since the Most Holy Lord, at the request of the General, has granted to the Apostolic Vicars in the kingdoms of China the faculty of promoting clerics to the sacred orders, even to the priesthood and the episcopate, even though they do not possess the necessary patrimony; the question is asked, whether such promoted clerics may engage in commerce for their support, may give money to merchants, and may enter into partnership with them, especially since

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they have no other means of supporting themselves in those parts?

Answer: It is tolerated solely for their own support, provided that the contract is of a licit nature, and that they only incur debts to the extent that constitutes an honest patrimony.

[*Latin ed. p. 635*]

APPENDIX III. 635 Sacred Congregation of Propaganda Fide, August 23, 1852. Concerning Missionaries with regard to privileges, etc. 1. Whether it can be permitted for missionaries to use a rocket in place of a cotta. 2. When missionaries visit their churches, are they received by the people with a baldachin and a cross, as is the Apostolic Vicar; is this to be tolerated? 3. Do Apostolic Missionaries enjoy ordinary jurisdiction as pastors, or only delegated jurisdiction for the missions to which they are sent by the Apostolic Vicar? 4. Can these same missionaries, with their own authority, just as pastors can, delegate another priest to assist and bless the marriages of the Christians entrusted to them? Also, can they hear the confessions of their Christian people even in another vicariate? R. To 1. No. To 2. No. To 3. No, to the first part; Affirmative, to the second. To 4. Provision is made in the preceding. From a letter of the Sacred Congregation of Propaganda Fide, February 4, 1860, to the Apostolic Vicar of Lhasa. Concerning the exercise of commerce. Having recently received from the Supreme Sacred Congregation, to which we submitted the questions proposed by A. T. concerning the exercise of commerce, the response which we are to communicate to you, we present it without delay, and it is as follows: Most Reverend Lord. — You have informed the Sacred Congregation of Propaganda Fide that it is absolutely forbidden, under penalty of expulsion, for all foreigners, and especially Europeans, to enter these regions of Tibet, whether they are subject to a king or to a great Lama, except for the purpose of commerce. Understanding this, A. T., fearing that the apostolic mandate which you have undertaken, namely, to evangelize this people, which is still sitting in darkness and the shadow of death and is superstitious, might remain unfulfilled, and since, as you assert, there is no other means, you considered it appropriate to traverse the borders of this kingdom as a merchant, under the pretext of which you intend to more easily and safely spread the Catholic faith. Therefore, in order to remove all suspicion from the minds of the infidels regarding the status and condition of you and your companions, you should strive not only with words, but also with deeds, to demonstrate that you are nothing other than a certain society of merchants addicted to earthly gains, and, in order that you may confirm this opinion willingly,

[*Latin ed. p. 636*]

636 APPENDIX III. It pleased you to establish here and there certain warehouses or shops for preserving and selling goods, and, what is re-

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markable, you accomplished all of this without consulting the Apostolic See, to which you finally turned, in order to be instructed regarding the lawfulness of this undertaking. The Most Eminent and Reverend Fathers of this Sacred Congregation, having seriously and carefully considered your requests, responded: it is not permissible in any way for missionaries to engage in commerce; and they decreed that you should be informed of this. And indeed, although it is known that you were motivated by zeal for the propagation of the Catholic faith, it should be clear to you that the decrees of the Holy Canons, the decrees of even the general councils, the Apostolic Constitutions, and the responses of the Holy Congregations to the requests of Apostolic Vicars, are entirely contrary to your manner of acting; nor can the goodness of an end justify the use of illicit means to achieve it, for evil things must not be done in order that good things may come. Furthermore, the divine religion of Christ must not be propagated through falsehoods and simulations, as heretics attempt to propagate their venerated dogmas. For the Lord our Savior, wishing to convert the human race, sent his apostles and disciples, saying to them: "Go into the whole world and preach the Gospel to every creature. Go and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit. Behold, I am sending you forth as sheep in the midst of wolves. Therefore be wise as serpents and innocent as doves." These are the divine admonitions, to which all who proclaim the Gospel must strive faithfully to adhere. The pretext of commerce, although it may seem suitable to you for propagating the faith, must never be used in the conversion of souls, lest it be considered indecent and highly unbecoming for apostolic men, by way of example of Christ and the Apostles, who never used such deceptions, by which they would seem to serve God and Mammon at the same time. For there are not lacking examples in which the infidels, as soon as they see those who declare themselves to be the highest ministers and ambassadors of God engaged in temporal affairs, despise them, believing that they use the pretext of religion in order to escape the hardships of poverty. In this way, they will lose that veneration and love, which is so necessary for winning souls to God above all else, and everywhere, and they will acquire for themselves the ignoble name of being guardians of money, rather than of souls. Therefore, not only the decrees of the Holy Canons, but also the Apostolic Constitutions (Urban VIII, *Ex debito Pastoralis Officii*, February 22, 1633; Clement IX, *Sollicitudo Pastoralis Officii*, June 17, 1669; Benedict XIV, *Apostolicae servitutis*, February 23, 1751; Clement XIII,

[*Latin ed. p. 637*]

APPENDIX III. 637 In his Encyclicis (*Cum primum*, 16 September 1759; et Pii VI, *in responsione ad Archiepiscopum Theodosiopolitanum*, 18 Martii 1782), si videtur quod contradicitur, necesse est ut ab opere mercaturae, sive per te, sive per alios, directe, aut quovis titulo vel colore, in

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posterum abstinearis, ne gravissimis poenis in SS. Canonibus et praesertim in praecitatis Constitutionibus latis, irretitus maneas. Hisce praehabitis, ne mireris si aliquando intelligas S. C. plerumque dispensasse cum nonnullis ab huiusmodi negotiationis prohibitione. Omnes enim a praefata S. C. de Prop. Fide concessiones alicui "Vic. Ap., vel presbyteris sinensibus ecclesiastico patrimonio carentibus factae, non nisi quosdam casus particulares, et quidem urgentissimos, respiciunt. Nunquam vero huiusmodi concessiones factae fuere ut missionarii exercitio mercaturae uti possent tanquam medio ad fidem Catholicam propagandam, prout A. T. obtinere peroptat. Seclusa ergo quacumque negotiatione, species medicinales duntaxat, ad infirmorum usum gratuito, vel saltem absque ullo lucro a missionariis in hac arte peritis exhibendas permittere vales. In reliquo, satage ut, prudentiori et meliori modo quo potes, evangelizentur pauperes qui circa missionariorum hospitia domicilium sibi elegerunt, eorumque pueri qui praefatorum missionariorum scholis intersunt; cura ut cum humanis litteris religionis quoque catholicae rudimentis imbuantur. Hisce praeiactis fundamentis, religionis aedificium, Deo adiuvante, ad suprema consurget; nam neque qui plantat est aliquid, neque qui rigat, sed qui incrementum dat Deus. S. Congreg. S. Officii, 20 Iunii I86G, Vic. Ap. Gallas. De instructione castae hominum vulgo Mangiò. Sunt in oppido Kafa quidam abiectissimae sortis seu castae homines vulgo Mangiò in Abyssinia Woilo nuncupati. Hi censentur non tantum ipsi esse immundi, verum etiam immunditiem communicare personis quibuscum agunt, et rebus, quae forte contrectant. Nondum coeptum est eosdem de Christiana Religione instruere, quia si missionarius cum iis conversaretur, evaderet et ipse immundus, ipsumque nemo amplius alloqueretur; praeterquam quod si vel semel aliquis Mangiò Ecclesiam intraret, haec illico pro immunda haberetur. Quapropter postulatur: 1. An memoratae difficultates praebeant sufficiens motivum, ne missionarius hanc castam instruere quaerat.

[*Latin ed. p. 638*]

638 APPENDIX IH. 2. In the case where someone of this group requests instruction from a missionary of their own accord, may he refuse to provide such service? 3. Is a certain family of this group under the authority of the Mission, and serving it? Would the missionary sin if, due to the aforementioned difficulties, he neglected to instruct that family? R. The Holy Catholic Church, in the dispensation of the mysteries of God, has never made any distinction between the rich and the poor, between the nobles and the lowly, but rather has always embraced the poor and the lowly with a certain special charity and maternal concern, who, as abundant experience testifies, are more easily led to the faith than the noble and wealthy of the world. For the Church imitates Jesus Christ, Our Lord, in whom there is no partiality, who said that He was sent to preach the Gospel to the poor, and who ate with publicans and sinners, although this

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caused the Pharisees to take the most grievous offense. Therefore, with regard to the three postulates, there is no doubt that missionaries, for the sake of their ministry, ought to strive with all their might to instruct and convert those called "Mangiò," and even more so if these "Mangiò," moved by divine grace, themselves request instruction, or if their servants have become subject to the service of the missionaries. Not only is it illicit to abstain altogether from instructing the "Mangiò" for the reasons given, but also, the missionaries should not appear to endorse a superstitious custom, probably derived from Jewish traditions, namely, the practice of avoiding contact with the "Mangiò," indeed, of having no communication with them whatsoever; a custom which is so contrary to Christian charity and sound reason that the missionaries should strive with all diligence to eradicate it completely. Meanwhile, however, in order to provide for the eternal salvation of the "Mangiò" as quickly as possible, the Most Holy Fathers have judged it necessary to appoint one of the missionaries without delay to be responsible for their spiritual care. Christians who observe this custom will be admitted to the Sacraments, provided that they do so only in order not to be segregated from the commerce of other citizens, but not spontaneously, and not out of the erroneous opinion that the "Mangiò" are unclean, and that they contaminate with impurity and uncleanness those with whom they deal or converse, or the things they use, or even the churches in which they enter. For this opinion is in no way tolerable in a Catholic, after God revealed to Saint Peter that no man is unclean or impure.

[*Latin ed. p. 639*]

APPENDIX III. 639 S. C. S. Officii, 16 December 1874. Apostolic Delegate for Mesopotamia. Concerning the faculties of Latin missionaries in the East. The powers, dispensations, etc., contained in the patents of the superiors of Latin missions in the East often give rise to ambiguity due to the varied nature of the persons with whom they are in contact. These patents are evidently drawn up for missions established in dioceses governed by Bishops or Apostolic Vicars of the Latin rite, who have direct and absolute jurisdiction over all the faithful of their dioceses; but here, the missionaries have real jurisdiction only over a very small number of Latins and some Easterners who lack pastors, but they find themselves, through the ministry of confession, in contact with Catholics of various rites who are nearby, namely, Greeks, Armenians, Syrians, and Chaldeans. Can these [missionaries], in this case, and in all matters that concern only internal matters, make use of the dispensations granted to the Superior of the Mission, as long as he grants them the faculty to do so? Answer: No.

S. Congr. S. Officii, 3 April 1889, Apostolic Vicar of Victoria-Nyanza. Concerning the visiting of the sick who are in grave danger. In the kingdom of Buganda, in order that a new persecution against Christians may not be

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stirred up, the faithful cannot publicly profess their religion, and they live almost as infidels. Hence, the greatest difficulty for the missionaries is to visit the sick.

[*Latin ed. p. 640*]

640 APPENDIX III. The difficulty of visiting the sick; for the presence of a missionary would expose the sick, and those among whom they live, and indeed all Christians who are not tolerated, to danger, their number being known to the king. Therefore, the question arises whether, in order to avoid this danger, missionaries may and ought not to visit the sick, or whether, disregarding any danger, either to themselves or to the Christian community, they may or ought to visit the sick who are in grave danger of death, so that they may restore them with the Sacraments of the Church. R. In answer: The faithful should be instructed by the missionaries to diligently avoid sin, considering the difficulty of having the assistance of a missionary at the hour of death, and to provide mutual assistance to one another in the danger of death; and furthermore, the missionaries should instruct the catechists well, so that, in the aforementioned cases, the catechists may, in some way, perform the duties of the missionaries. Sacred Congregation of the Holy Office, March 6, 1777, Apostolic Vicariate of Cochinchina. It is permissible for missionaries to exchange goods for necessities of life. In the Province of Cambodia, where money is either not in use, or is of almost no value, it is customary for others to bring goods, in order to exchange them for necessities of life. The question is asked whether the same is permissible for missionaries... The reason for doubting is that elsewhere they may not be sold, or may be sold at a very high price. R. It is permissible by way of exchange, only with respect to goods corresponding to other things necessary for life. Sacred Congregation of the Holy Office, April 26, 1809, Apostolic Vicariate of Peter, Constantinople. Concerning the powers of Prefects. 1. Whether the powers of Prefects should be restricted only to their religious subjects. 2. Whether these powers can be exercised where the Apostolic Vicar is present. R. To 1. No. To 2. Yes, according to the tenor of the Forms and extraordinary powers.

[*Latin ed. p. 641*]

641 Letters from the Most Holy Lord Pope Leo XIII to the Most Eminent Cardinals: FLORIAN CARD. DESPREZ, of Arene, of Toulouse; CHARLES CARD. LAVIGERIE, Archbishop of Algiers and Carthage; CHARLES PHILIPPE CARD. PLAGE, Archbishop of Rennes; JOSEPH CARD. FOULON, Archbishop of Lyon; BENOIT MARIE CARD. LANGÉNIEUX, Archbishop of Rheims; FRANÇOIS CARD. RICHARD, Archbishop of Paris.

OUR MOST DEAR SONS:

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It has been a great comfort to Us to receive the letter which you sent, in which you declared, with unanimous accord with the entire French Episcopate, your adherence to Our Encyclical. Amidst the anxieties, We thank you for having published it, and We rejoice in the noble sentiments expressed therein, testifying to the intimate union which binds the Bishops of France, and in particular the Cardinals of the Holy Church, to the See of Peter.

This Encyclical has already done much good, and We hope that it will accomplish even more, despite the attacks to which it has been subjected by passionate men; attacks against which, We are pleased to say, it has also found valiant defenders. We had foreseen these attacks. Wherever the agitation of political factions deeply stirs the minds, as is happening now in France, it is difficult for all to immediately render to the truth that full justice which is its due.

But was it necessary for Us to remain silent? Indeed! Does France suffer, and would We not have felt, to the very depths of Our soul, the pains of this eldest daughter of the Church? France, which has earned the title of a most Christian nation and intends to relinquish it for nothing, struggles amidst anxieties against the violence of those who would seek to de-Christianize her and lower her in the eyes of all peoples, and would We have omitted to appeal to Catholics, to all honest Frenchmen, to preserve for their homeland that holy faith which made her great in history? God forbid.

Acta, Tom. XXIV, page COLXXXVII. 41

[*Latin ed. p. 642*]

642 LETTERS. Or, we observed more and more each day, in the pursuit of this goal, that the actions of good men were necessarily paralyzed by the division of their forces. Hence what We have said and repeat to all: "Be not divided, but of one mind, that you may support together that which surpasses all earthly advantage: the Religion, the cause of Jesus Christ. In this, as in all things, seek first the kingdom of God and His justice, and all these things shall be added unto you." This fundamental idea, which dominates the entirety of Our Encyclical, has not escaped the enemies of the Catholic religion. We could say that they have been the most discerning in grasping its meaning, in measuring its practical scope. Therefore, since the aforementioned Encyclical, a true messenger of peace for every man of good will, whether considered in its substance or its form, these partisans have redoubled their impious zeal. Various deplorable events that have recently occurred, which have saddened Catholics and, as We know, even a number of men not suspected of partiality towards the Church, serve to prove this. It has become clear where the organizers of this vast conspiracy, as We called it in Our Encyclical, which is formed to annihilate Christianity in France, intend to lead. These men, seizing upon the slightest pretexts to achieve their ends, and knowing how to conjure them up if necessary, have taken advantage of certain incidents that, in other times, they would

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have considered harmless, to give free rein to their recriminations; thereby demonstrating their bias, and sacrificing the general interest of the Nation, in that which is most worthy of respect, to their anti-religious passions. Faced with these tendencies, and faced with the evils that flow from them, to the great detriment of the Church of France, which are increasing day by day, Our silence would have made Us guilty before God and before men. It would have seemed that We were contemplating with impassive eyes the sufferings of Our sons, the French Catholics. It would have been insinuated that We judged worthy of approval, or at the very least of tolerance, the religious, moral, and civil ruins piled up by the tyranny of anti-Christian sects. We would have been reproached for leaving without direction and support all those courageous Frenchmen who, in these present tribulations, need more than ever to be...

[*Latin ed. p. 643*]

LETTERS 643, fortified. We must, above all, offer encouragement to the clergy, to whom, contrary to the nature of their vocation, silence is being imposed in the very exercise of their ministry, while they preach according to the Gospel and the faithful fulfillment of Christian and social duties. Moreover, is it not always a pressing obligation for Us to speak, whatever may happen, whenever it is a matter of affirming Our divine right to teach, to exhort, to warn, in the face of those who, under the pretext of a distinction between religion and politics, would seek to circumscribe its universality? This is what has determined Us, of Our own accord and with full knowledge of the matter, to raise Our voice; and We shall not cease to raise it, whenever We deem it opportune, with the hope that the truth will ultimately make its way into the hearts of those who resist it, perhaps with a remnant of good faith. And since the evil that We point out, far from being limited to Catholics, affects all men of sense and uprightness, We have also addressed Our Encyclical to them, so that all may hasten to stop France from sliding down the path that leads it to the abyss. Now, these efforts would become utterly sterile if the conservative forces lacked unity and concord in the pursuit of the ultimate goal, that is, the preservation of the religion, since this is where every honest man, every sincere friend of society, must strive. Our Encyclical has amply demonstrated this. But once the goal has been clarified, and the need for unity to achieve it has been admitted, what means shall be employed to ensure this unity? We have also explained this, and We wish to reiterate it, so that no one may misunderstand Our teaching: one of these means is to accept, without reservation, with that perfect loyalty that befits a Christian, the civil authority in the form in which it, in fact, exists. Thus, the first Empire was accepted in France, in the wake of a terrible and bloody anarchy; thus, the other powers, whether monarchical or republican, that succeeded each other until our time, were accepted. And the reason for this acceptance is that the common

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good of society outweighs all other interests: for it is the creative principle, it is the conservative element of human society; therefore, every true citizen must desire and promote it.

[*Latin ed. p. 644*]

644 *Litterae* at all costs. Now, from this necessity of ensuring the common good, arises, as from its own and immediate source, the necessity of a civil power which, orienting itself towards the supreme goal, wisely and constantly directs the multiple wills of the subjects, grouped together in its hand. Therefore, when, in a society, there exists a constituted and operative power, the common interest is linked to this power, and for this reason, it must be accepted as it is. For these reasons, and in this sense, We said to the French Catholics: Accept the Republic, that is, the constituted and existing power among you; respect it; be subject to it as representing the power that comes from God. But there were men belonging to various political parties, and even sincerely Catholic, who did not quite understand Our words. Yet they were so simple and so clear that they seemed not to be susceptible to false interpretations. Let us reflect on this: if political power is always from God, it does not follow that the divine designation always and immediately affects the modes of transmission of this power, nor the contingent forms that it assumes, nor the persons who are its subjects. The very variety of these modes in the various nations clearly shows the human character of their origin. Moreover, the best human institutions, founded in law and established with views as salutary as one wishes, do not always maintain their vigor in accordance with the short-sighted predictions of human wisdom. In politics, more than elsewhere, unexpected changes occur. Colossal monarchies collapse or disintegrate, like the ancient kingdoms of the East and the Roman Empire; dynasties supplant dynasties, as those of the Carolingians and the Capetians in France; to the political forms adopted, other forms are substituted, as our century shows many examples of. These changes are far from always being legitimate; indeed, it is even difficult for them to be so. Nevertheless, the supreme criterion of the common good and public tranquility imposes the acceptance of these.

[*Latin ed. p. 645*]

LETTERS 645. New governments are established in fact, taking the place of previous governments which, in fact, no longer exist. Thus, the ordinary rules of the transmission of power are suspended, and it may even happen that, with time, they are abolished. Whatever may be the case with these extraordinary transformations in the life of peoples, the calculation of which belongs to God, and the utilization of the consequences to man, honor and conscience demand, in all circumstances, a sincere subordination to constituted governments; this is required in the name of that supreme, undeniable, and inalienable right, which is called the reason for the com-

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mon good. Indeed, what would become of honor and conscience, if it were permitted to the citizen to sacrifice to his personal ambitions and party affiliations the benefits of public tranquility? Having firmly established this truth in Our Encyclical, We have formulated the distinction between political power and legislation; and We have shown that the acceptance of the one does not necessarily imply the acceptance of the other, in those points where the legislator, forgetting his mission, would oppose the law of God and the Church. And let all take note: to exert one's activity and to use one's influence to induce governments to change unjust or unwise laws for the better, is to demonstrate a devotion to the homeland that is both intelligent and courageous, without giving the slightest hint of hostility to the powers charged with governing public affairs. Who would dare to denounce the Christians of the early centuries as adversaries of the Roman Empire, because they did not bow before its idolatrous prescriptions, but strove to obtain their abolition? On this religious ground, thus understood, the various political parties, whether conservative or otherwise, can and must agree. But those men who would subordinate everything to the prior triumph of their respective party, even under the pretext that it seems to them most apt for religious defense, would thereby be convinced of, in fact, bringing about, through a disastrous reversal of ideas, a policy that divides before religion unites. And it would be their fault, if our enemies, exploiting their divisions, as they have done all too often, were finally to crush them all.

[*Latin ed. p. 646*]

646 *LITTERAE*. Il a été prétendu que, en enseignant ces doctrines, Nous tenions envers la France une conduite différente de celle que Nous suivons à l'égard de l'Italie; de sorte que Nous nous trouverions en contradiction avec Nous-mêmes. Et cependant, il n'en est rien. Notre but, en disant aux catholiques français d'accepter le gouvernement constitué, n'a été et n'est encore que la sauvegarde des intérêts religieux qui Nous sont confiés. Or, ce sont précisément ces intérêts religieux qui Nous imposent, en Italie, le devoir de réclamer sans relâche la pleine liberté requise pour Notre sublime fonction de Chef visible de l'Église Catholique, préposé au gouvernement des âmes; liberté qui n'existe pas, là où le Vicaire de Jésus-Christ n'est pas chez lui, vrai Souverain, indépendant de toute souveraineté humaine. Que conclure de là sinon que la question qui Nous concerne en Italie, elle aussi, est éminemment religieuse, en tant qu'elle est rattachée au principe fondamental de la liberté de l'Église? Et c'est ainsi que, dans Notre conduite à l'égard des diverses nations, Nous ne cessons de faire converger tout vers le même but: la religion, et par la religion, le salut de la société, le bonheur des peuples. Nous avons voulu, Nos très chers Fils, vous confier toutes ces choses, pour soulager Notre cœur et, en même temps, conforter le vôtre. Les tribulations de l'Église

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ne peuvent manquer d'être très amères pour l'âme des Évêques, et plus encore pour la Notre, puisque Nous sommes le Vicaire de Celui qui donna, pour la formation de cette Sainte Église, tout Son sang. Ces amertumes, cependant, loin de Nous abattre, Nous stimulent à Nous armer d'un plus grand courage, pour faire face aux difficultés de l'heure présente. Il en résulte aussi, pour Nous, un redoublement de zèle en faveur de cette France catholique, d'autant plus digne de Notre affection paternelle, qu'elle sollicite de Nous, avec une confiance plus filiale, encouragement, protection et secours. Ces sentiments sont aussi les vôtres, Nos très chers Fils; vous venez de Nous en donner la preuve, et Nous avions déjà pu Nous en convaincre lorsque vous veniez près de Nous, les uns après les autres, Nous rendre compte de votre ministère et conférer des intérêts sacrés dont Nous avons la garde. Parmi les motifs de confiance qui Nous réjouissent, cette unanimité est certes l'un des plus puissants, et Nous en remercions Dieu du fond de l'âme. Nous comptons sur la continuation de...

[*Latin ed. p. 647*]

LETTERS 647: Your eagerness to support Our paternal concerns for this beloved country of France. And with this assurance, as a pledge of Our affection, We grant, Our most dear Sons, to you, to your Clergy, and to the faithful of your Dioceses, with all the outpouring of Our heart, the Apostolic Blessing. Given at Rome, on the 3rd of May of the year 1892, in the fifteenth year of Our Pontificate. LEO P. P. XIII.

(Latin Version) We have received your Letters with great joy, in which you spontaneously declare that you and all the Bishops of France will embrace Our encyclical letter, and you give thanks that We have brought it to light, expressing with the most excellent words the closest union with which the Bishops of France, and especially the Cardinals of the Holy Church, are bound to this See of Peter. This encyclical letter has already accomplished some good, and We hope that it will accomplish even more; although it has been unjustly attacked by certain turbulent individuals. Against such hostile attacks, We freely declare, that it has found many, and powerful, defenders. We indeed foresaw these hostile attacks. Wherever the fervent pursuit of factions strongly stirs the minds of citizens, and indeed this prevails today in France, it will be very difficult for all to immediately submit fully and completely to the truth, which rightly demands it. But should We therefore remain silent? Alas! Afflicted is France, and We, who call it Our most beloved daughter of the Church, do not feel the pains in the depths of Our heart. France, which has acquired the name of the most Christian nation, never wishes to renounce it, and struggles against all sides with the pains of those who seek to deprive it of the Christian religion, and openly to oppress it before other peoples; and

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We Catholics, all...

[*Latin ed. p. 648*]

648 Have we omitted to exhort honest citizens of France to diligently preserve that holy faith, which has so greatly influenced France itself throughout history, in the land of their birth? May God avert this from us. Indeed, as We are learning more and more each day, the actions of upright men, when striving to achieve such results, are necessarily lacking in strength and effectiveness, divided as they are. Hence, as We have often urged, and now urge anew: Let there be no schisms among you (1 Corinthians 1:10); or, as they say, political factions: but rather, a perfect union of minds, so that all, unitedly, may protect above all else that which surpasses every earthly advantage, namely, the Religion and the cause of Jesus Christ. In this matter, as in all others, let them remember the words of Christ: "Seek first the kingdom of God and his justice, and all these things shall be added unto you" (Matthew 6:33). This idea, which dominates our entire encyclical letter, has not escaped the enemies of the Catholic Religion, nor has it eluded them. We can affirm that they have, in understanding its meaning, and in recognizing its power and effectiveness, been most perceptive. And so, after this encyclical letter, which proclaimed the true message of peace, whether considered in its substance or its form, these men, who are supporters of civil interests, have waged an impious war against the Church. Certain recent events, which have caused great sorrow, and which have, as We know well, affected Catholics here, and indeed, many citizens who are not entirely suspicious of a certain lack of affection for the Church, clearly demonstrate this. It is now clearly and plainly seen by all, what the authors of this so vast conspiracy, as We call it in our encyclical letter, intended, namely, to utterly destroy the Christian Religion in France. These men, pretending to achieve their goals, have used any pretext, even the smallest, and have carefully considered, and when necessary, even invented new ones, fabricating and threatening with fortuitous events, which in other times would have been considered entirely harmless, in order to provide a wide-open field for their deceptions, thereby revealing the purpose of their minds, their own opinions, and their ungodly desires. The good of the nation, and indeed...

[*Latin ed. p. 649*]

649. Concerning matters of religion, which is the most worthy object of reverence and sacrifice, we have remained silent. Because of these evils, and especially those which are ruining the Church and France, and which are becoming worse and more grievous each day, they claim that our silence has made us guilty before God and men. We have been accused of witnessing, with dry eyes, the grief and suffering of the sons and daughters of France, all of whom are Catholics. Furthermore, we have been reproached

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for having considered the religious, moral, and civil ruin that has been brought about by the tyranny of impious sects as worthy of approval, or at least of tolerance. Moreover, we have been blamed for having abandoned those valiant Frenchmen who, in these public calamities, are in need of our help and support more than ever. It has been said that we ought to have favored and encouraged the clergy in particular; whereas, on the contrary, they claim that our own actions, fulfilling the nature of our office, and our silence in the very exercise of the sacred ministry, while preaching fidelity and obedience to Christian and civil duties from the pulpits, indicate that we are opposed to them. Furthermore, is it not always our duty to speak, whatever may happen, since our divine right to teach, exhort, and warn is strongly asserted against those who, under the false pretext of distinction, seek to limit the universality of our divine right, whether it be in matters of religion or of the kingdom or republic? Therefore, they claim that we were moved entirely of our own accord, and with full knowledge of the cause, to raise our voice; and we hope that we will never cease to raise it, whenever it seems opportune to us, so that the truth itself may open the way to the hearts of those who, perhaps with some remnant of good faith, resist it. For the evils that we have enumerated do not concern Catholics alone, but also all upright and sincere men; therefore, we have also directed our Encyclical Letter to these, so that all may hasten to halt the decline of France, which is undoubtedly leading it to the abyss. But these efforts will be entirely futile if the union and concord of hearts are lacking among those who are striving for the common good, especially when the primary goal to be achieved is the preservation of religion; for all honest and good men, all sincere souls, must...

[*Latin ed. p. 650*]

650 The letters of a society of friends should certainly concern themselves with this matter. Indeed, we demonstrated this most extensively in our Encyclical Letter. But having once established this purpose, and having recognized the necessity of achieving it, what means will be employed to secure this union of minds? We also explained this sufficiently in the same Letter, and in order that no one may be deceived regarding our instructions, we wish to reiterate it here. Among these means, one is, "without any doubt, with sincere and complete faith, which befits a Christian, to accept and willingly submit to civil authority, whatever form it may truly have." Thus, in Gallia, the first Empire was received after a terrible and bloody anarchy; and thus, other regimes, whether monarchical or democratic, which have occurred there up to this day, have been received. The reason for this acceptance is the common good of human society, which surpasses all other goods; for this is the principle that brings the society into being, and the element that preserves it; from which it follows that every true citizen must, at all costs, desire and strive for it. Indeed, the

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necessity of comparing and securing this common good is derived, as it were, from its own immediate source; and a civil government, adapting itself to the ultimate purpose of society or the nation, wisely and steadfastly directs the many wills of its subjects, which it holds, as it were, within its grasp. Therefore, when a government is established and truly acts and is recognized within any human society, the common good of that society feels itself, in a certain way, bound to that government, and it must be accepted by all, whatever it may be, for this very reason. For this very reason, and with this very understanding, we have instructed the Catholics of Gallia: "Accept the Republic, that is, the established government which rests with you; revere it, and be subject to it, as to a power that comes from God." But some people, belonging to political factions opposed to each other, and who are at the same time sincere Catholics, are found here, who have not understood our words correctly, or have not given themselves an account of them. However, these were so simple and clear that they seemed not to allow room for a false interpretation.

[*Latin ed. p. 651*]

LETTERS 654. Here, each one should diligently consider: although civil authority is always from God, it does not necessarily follow that the divine arrangement for transmitting this authority, whether in its variable modes, its forms, or even the persons who exercise that authority, are always and immediately effective. Indeed, the very variety of these modes in different nations clearly demonstrates their human origin. Furthermore, it must be added that all human institutions, even those most firmly founded in law and possessing the best intentions, which anyone might desire to strengthen the social order and give it greater impetus, never, according to the unstable predictions of human wisdom, always maintain their force. In public affairs and law, unexpected changes often occur more frequently and easily than elsewhere. Great and most stable monarchies are overthrown or weakened, as happened with the kingdoms of the East and the Roman Empire; dynasties are replaced by other dynasties, as happened with the Carolingian and Capetian dynasties in France; forms of government long adopted are suddenly superseded by others, and our own age provides many examples of this. Such changes are not always, in their origin, legitimate; nor can they easily be so. Nevertheless, the supreme good of the community and public tranquility, established by the very fact of the new regime taking the place of the previous one, which no longer exists, require that all citizens accept and willingly submit to it. Therefore, the ordinary laws for transmitting civil authority to successors remain suspended; and it can also happen that these new forms, after a time, are completely abolished. Whatever may be the case with these changes in the forms of government that occur in the life of nations, which are governed by laws that ultimately relate only to God, and from which

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men are to derive benefit, civil propriety and conscience demand that, whatever the circumstances, we show sincere obedience and submission to the government that is now established. Indeed, we are commanded to do this by the name of this supreme law, which cannot be disputed or lost, and which is called the reason of the common good. For what would become of civil propriety and conscience if each citizen were to follow his own opinion, whether it favored one pole or the other?

[*Latin ed. p. 652*]

Do letters favoring the tical faction serve, and does it benefit the common good of public tranquility? We have, after having demonstrated this truth with strong arguments in our Encyclical Letter, clearly established the distinction between civil authority and legislation itself, and have shown that the one is not in any way to be confused with the other; and if, at times, a legislator, forgetting his duty, acts contrary to the laws of God and the Church. And it must be diligently considered by all that he who truly displays devotion, both wise and zealous, towards his country, and uses his authority, as far as it extends, to persuade the rulers of the Republic to enact just and prudent laws, would truly demonstrate a genuine devotion and wisdom, rather than appearing to be hostile to civil authority, to which the administration of the Republic has been entrusted. For who, in past times, ever accused Christians of being enemies of the Roman Empire, when they refused to conform to the edicts of the emperors who worshipped idols, but rather, they strove to abolish those very edicts? In matters of faith and religion, opposing civil factions can and should come together. But these men, who among you are prepared to subordinate everything to the triumph of their own faction, to which they are, in fact, subservient, even if they perhaps allege a pretext that it seems to them most suitable for the defense of religion, nevertheless, by this very action, demonstrate that they are deeply convinced that political divisions, which divide, are to be preferred to religion, which unites, a completely perverse inversion of ideas. And it is to these that blame is due, if our adversaries, taking advantage of these divisions, as, alas! has actually happened to a great extent, manage to crush those very people who are numerous. It is certainly asserted that we, in presenting these principles, follow a completely different path with regard to France and with regard to Italy; so that it may seem that we are contradicting ourselves. But this is entirely false. For our purpose, when we urge Catholics in France to accept and freely submit to the established regime, is not, and is now, nothing other than to safeguard those things which are of the utmost importance to religion, and which have been entrusted to our care. But these very reasons, firmly rooted in the Catholic religion, compel

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us in Italy to fulfill, by virtue of our office, a complete and integral...

[*Latin ed. p. 653*]

LETTERS 653: The freedom which is a most sublime office, by which We, as the visible Head of the Catholic Church and entrusted with the governance of the souls of the faithful, fulfill Our duty, demands that We constantly strive for it: freedom, which is utterly absent where the Vicar of Jesus Christ does not possess the highest authority, subject to no other human power, but truly governs. What follows from this? Only that the question which concerns Us in Italy is most closely related to Religion, and indeed, from the very beginning, is linked to the principal matter, which is the freedom of the Church. And for this reason, in Our dealings with other nations, which are profoundly different from each other, We constantly strive that all things may be directed towards the same goal; which is nothing other than Religion, and through Religion, the salvation of human society and the happiness of peoples. We have desired, most beloved sons, for the sake of comforting Our hearts and, at the same time, strengthening yours, to make all these things clear to you especially. The sorrows of the Church are, indeed, bitter to the hearts of bishops, but especially to Ours; for We carry out in this world the role of Him who shed all His blood for the establishment of the Holy Church in the world. But such mental anguish does not discourage Us in any way; rather, it spurs Us on. And it adds strength to Us, to be equipped with greater virtue and fortitude, so that, as is fitting, We may resist those difficulties which cause Us distress. Therefore, from this, a greater zeal and love for Catholic France grows within Us, the more that France is worthy of Our paternal affection, which is wonderfully aroused by the same and extraordinary filial trust, singular support, and aid given to Us by her. These feelings of Ours, most beloved sons, are also yours: and you have now given Us proof of this; but We ourselves, when you came to Us individually, to give Us an account of the work of your ministry, and to discuss the ecclesiastical affairs which have been entrusted to Us for safekeeping, were able to perceive this very clearly. Among the many reasons for joy that affect Us, this harmony of minds is certainly one of the most important, and for it We give heartfelt thanks to God. We are confident that you will continue to devote your zeal and your care to furthering Our paternal concern for this region so dear to Us, France. And with this firm hope, We act as if We are –

[*Latin ed. p. 654*]

654 LETTERS, as a pledge, To you, most beloved brothers, we impart, with the whole affection of our heart, the Apostolic Blessing to you and to the faithful of your Diocese. Given at Rome, on the third of May in the year of Our Lord 1692, in the fifteenth year of Our Pontificate. LEO XIII, POPE. LETTERS from His Holiness Pope Leo XIII to the Ordinar-

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ies of North America concerning the agreement of the Archbishop of St. Paul regarding two Catholic schools. Venerable Brothers, greetings and the Apostolic Blessing. — The letters which you jointly wrote from the Archiepiscopal residence in New York, as you were about to attend the consecration of the Bishop of Brooklyn, have filled Us with twofold joy. For they showed that your minds, concerned about the religious instruction of children, were eager to pour out their doubts and anxieties into Our bosom, ever ready to receive them with kindness. Therefore, that nothing might remain in your minds which would cause those anxieties and uncertainties, We have decided to respond to you with letters; and these are not only a sign of Our paternal charity towards you, but also a testimony of the concern which We feel for the faithful in the vast region of the United States of America, which, because of the growth of the Catholic religion there, gives Us joy now and promises even greater joys in the future. Indeed, this concern did not allow Us to remain indifferent amidst the recent controversies and disputes that arose there, and which inflamed the minds of men, due to the convention begun between the Venerable Brother Archbishop of St. Paul and the civil authorities concerning two parish schools, which he considers with great care within the diocese entrusted to him. In the heat of this unfortunate conflict, it is not surprising that falsehoods were sometimes reported as truths, and that suspicions, fueled by public rumor, spread widely. We, indeed, received this with great displeasure; and unless Our concern had been turned to it in time, there was a danger that perfect harmony of minds and common endeavors would be greatly impaired.

[*Latin ed. p. 655*]

LETTERS: We acknowledge that it is necessary for sacred pastors and for us to diligently foster the conspiracy, and we are ready to do so by any means and with all our strength. Therefore, in accordance with the demands of our office, we have carefully examined all the matters concerning which knowledge and information pertain to our ministry, and, setting aside all considerations of party, we have applied our minds to the investigation of the case, as the Most Reverend Archbishop presented it to us, promising that he would readily and completely submit to our judgment, whatever it might be; and this declaration, for its own merit, could not be strongly approved by us. Furthermore, in order that the truth of the facts may be fully explored and that the weight of the reasons presented on both sides may be properly assessed, we have convened a special assembly of Fathers Cardinals, chosen from among those who are members of the Sacred Council, dedicated to the propagation of the Christian name, who have devoted themselves to this study with singular diligence, and we have decided to resolve the proposed question with the response that our beloved son, the Cardinal Prefect of that Sacred Council, has arranged to present to the ecclesiastical superiors of the churches in the United States of America.

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But in order to hasten that which excites your minds and prompts you to write, we wish to assure you that there is no need to fear that anyone has imputed suspicion to us, lest some grievous persecution befall Catholics if the actions that were undertaken by the Most Reverend Archbishop of St. Paul concerning the schools located in the towns of Faribault and Stillwater were to be disapproved by us. Since neither the aforementioned Venerable Brother nor anyone else has mentioned this danger, it is clear that the rumor is born of falsehood, which has led you to a completely empty and false opinion. For we have approached the knowledge and judgment of this case with a careful and studious memory of the decrees that, with the foresight of this Apostolic See, were established in the Baltimore Councils concerning parochial schools. We intend to observe these steadfastly; for it is true that in all general laws, if something singular and unforeseen occurs, it is permissible, if equity suggests it, to tolerate something that deviates somewhat from the letter of the law, and we have easily found that this case falls under such circumstances; therefore, guided by moderation and prudence rather than by the rigor of the law, we have deemed it right to judge the matter in question. Moreover, among the sacred pastors of your region, we know those who are most observant of this Holy See.

[*Latin ed. p. 656*]

656 We have received LETTERS and have learned that, when We approach, some individuals, with absolutely no exception, hesitate to express their views on the doctrine taught in schools where Catholic children are educated. Indeed, it is the unanimous opinion that schools, if they are to be truly beneficial, cannot be neutral with regard to religion; but all confessors agree (as happens in regions inhabited by Catholics mixed with non-Catholics) that schools should be those in which children are properly instructed in religion by those whom the Bishop has recognized as qualified for this ministry. Therefore, Venerable Brothers, it is fitting that you, together with the other Diocesan Ordinaries of this region, join in councils and studies of a similar nature, so that Catholic children may not participate in those literary games in which their religious instruction is neglected, and in which there is an open threat of corrupting morals. Therefore, We earnestly desire, as We have signified to you through the Sacred Congregation for the Propagation of the Faith, that in the upcoming meetings of Bishops, diligent consideration be given to the measures that will best contribute to this end. We also urge you to strive that those who are in charge of affairs in each state, rightly recognizing that nothing is more important to the well-being of the republic than religion, may, with wise deliberation, ensure that the teaching ministry, which is carried out at public expense and also with the contributions of Catholics, contains nothing that offends the conscience or religion. For We are convinced that even your citizens who are different from Us, because of their natural talents

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and prudence, will readily abandon suspicions and opinions offensive to the Catholic Church, and will freely acknowledge its merits, which, having banished ethnic barbarism through the light of the Gospel, have given rise to a new society, distinguished by the beauty of Christian virtues and all the cultivation of humanity. Having considered these things, We believe that Catholic parents will be compelled to establish and maintain gymnasiums and schools, which they can use to educate their children. In the meantime, We are confident that, having read these Letters of Ours, nothing sad or gloomy will remain in your hearts, but rather that a slight cloud will be dispelled. Indeed, We are certain that you will be increasingly bound by the bonds of perfect charity with the other Venerable Brothers, with whom you are united by the common name of our country, by the companionship of pastoral ministry, and by our equal benevolence towards all. May you have one heart and one soul, and may you proceed with united and concordant forces.

[*Latin ed. p. 657*]

LETTERS 657: We earnestly strive for the glory of the divine name and the salvation of souls. Therefore, we implore the help of the Almighty, and with apostolic blessing, we impart to you, Venerable Brothers, the Clergy, and the faithful entrusted to your care, earnestly in the Lord. Given in Rome, near St. Peter, on the 23rd of May in the year 1892, in the fifteenth year of Our Pontificate. LEO P. XIII.

FROM THE HOLY CONGREGATION OF THE COUNCIL OF IPPOREGIEN.

EXEMPTION.

January 23, 1892.

By summary request.

COMPENDIUM OF FACTS.

The Chapter of the Cathedral of Ipporegien presented the following to the Holy Congregation at the beginning of this century: The Canons possessed a proper and distinct prebend, with their own names and their own burdens and revenues. These prebends were diminished by the French Revolution, and finally, the canonical prebends were alienated by the government of Napoleon. With the restoration of the Piedmontese government, the small revenues that remained were collected, with some auction, into the common fund, with a separate portion reserved for the distribution to the choir. Thus, the burdens and revenues were divided and assigned to each Canon, so that each, in addition to the service, must say about 60 Masses for benefactors during his own week, in addition to the conventual

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Masses. It should be noted that these burdens of Masses still retain the names of the prebends to which they are attached. Before the year 1885, these Masses were read from the Acts, Volume XXIV, page XXXVII, 42.

[*Latin ed. p. 658*]

658 IPPOREGIEN. It had been assigned as alms the sum of two *libellae* or one and a half, in order that it might be determined whether they were to be said at a designated altar or not. Now, however, after deliberation by the Chapter, with the approval of the Bishop, the sum of these alms has been added to the common offerings for Mass; but at the beginning of each year and month, an equal number of these Masses is assigned to each canon, with the obligation to perform them adequately. With these premises, the Chapter informed the archpriest, Joseph Destefanis, who, having completed a laudable forty years of service, had recently been granted a jubilee indulgence by the Sacred Congregation of Rites, that he considered himself exempt from the obligation of celebrating such Masses, which were attached to the ancient duties of the prebend; and therefore, regarding this point of contention, the wise E. E. VV. were seeking an oracle. Synopsis of the Discussion. WHAT IS ARGUED AGAINST THE CANON GRANTED A JUBILEE. The opinion of the Chapter is that these obligations also apply to canons granted a jubilee, and that this can be confirmed either by law or by the particular custom of the Cathedral of Ipporegien. Indeed, from what has been stated above, it appears that the Masses in question are special obligations attached to each prebend by pious founders, and that these have not altered their nature by the institution of the common Mass; moreover, for their satisfaction, a canon celebrating Mass was, a few years ago, separately compensated with an alms, apart from the fruits of the benefice. Moreover, the Sacred Congregation of Rites has repeatedly held that a jubilee indulgence cannot be extended to these special works, especially in the Jubilee of Constantinople, May 5, 1737; in the Jubilee of Montefiascone, September 10, 1853, in which the Sacred Congregation refused to exempt certain canons from certain Masses to be celebrated according to a special endowment in a rural chapel; and also in Civitas Castellanae, July 15, 1820, and in the Jubilee of Pistoia, August 7, 1773, where the Distribution of Praenestina, March 1 and April 1, 1662, is also cited. If, however, a different rule has ever been established, it is a deviation from the general rule.

[*Latin ed. p. 659*]

IPPOREGIEN. 6S9 The general rule is to be derived not from any other source than from the various circumstances of the cases, and from the particular statutes and customs of each church, as is clearly stated by the document *folium* of the Holy Congregation in Rieti, concerning the Conventual Mass, of January 26, 1850, § "Indeed, it is so." Furthermore, concern-

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ing the granting of canonical jubilees and exemptions, it is customary to consider custom as the primary reason, to which one must adhere, even if it is contrary to the statutes of the church, as the Holy Office clearly stated in the document relating to Tudertina, in book 1, Decret, page 86, and subsequently affirmed in several resolutions. And that this observance is in force in the Ipporegiense chapter concerning these matters is stated by the canons in these words: "Up to now, the canons granted jubilees have fulfilled their obligations as have other canons." Furthermore, it may be considered that although the grant of a jubilee is, in a certain respect, favorable, yet, in another respect, it is also objectionable, as can be seen from the document *Piacentina* concerning jubilees, of July 28, 1787, § "Although," and from the document *Constantien.* of May 4, 1732. This is especially important to consider, not only because of the general reason that the service of the church is diminished, but also because the celebration of many Masses, from whose alms the jubilarian would receive, would burden other canons. Therefore, it might be fitting to restrict this objectionable practice, and the benevolent requests of the Ipporegiense chapter should be considered. WHAT CAUSES FEAR FOR A CANON GRANTED A JUBILEE. Nevertheless, it must also be kept in mind that a jubilee is comparable to a soldier "who, having completed his service, lays down his arms and, having left the office he held, is sent to his own lands as a veteran, so that he himself may enjoy the rest earned by his labors, and so that others may be more eager to undertake the work of a future rest." Scarfantonius to Ceccop., book 3, *Animadv.*, towards title 6, no. 9. Therefore, the Holy Congregation has usually considered the granting of jubilees as favorable reasons; so that it could be properly applied in the document *Xwcana* concerning exemptions, of April 16, 1852, § "Furthermore: 'This has been the discipline of the Holy Congregation, namely, to consider canons granted jubilees as exempt from the celebration of Masses, whether conventual or chapter Masses, either by themselves or by others.'" To which...

[*Latin ed. p. 660*]

660. Regarding the case of Ipporegien, it is similar to the case of Spoletana Jubilationis, of August 15th and November 24th, 1770, and Balneoregien, of August 19th, 1713, and Praenestina, of September 5th, 1835, in which canons who had reached the jubilee year obtained an exemption from certain obligations, regardless of any burdens that might be attached to their position by the chapter. Indeed, in the aforementioned case of Praenestina, the following question was proposed: "Whether canons who have reached the jubilee year are obligated to apply all the alms collected, which are not intended for the common Mass, as is the custom in the cathedral of Praenestina?" The response was: "No."

Furthermore, concerning the nature of the obligations that the canon Destefanis was supposedly burdened with, according to the chapter, and

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also concerning the custom mentioned above, it is advisable to hear the statements of the canon himself, for he stated: "These are special obligations that are not mentioned in this chapter; the endowments for which the French government suppressed; which, upon the restoration of the Piedmontese government, received a new endowment, converted into a common Mass." Thus, the alleged special obligations, along with the endowment and the revenues to which they were attached, disappeared. In order to comply with the wishes of the ancient founders, the chapter assumed the obligation of celebrating certain Masses in their memory, imposing this obligation on the common Mass. To fulfill this obligation, the chapter, at the appropriate time, distributed the Masses among the individual canons, establishing that for each Mass, an alms of one libra and a half should be given, and two libras for Masses celebrated at the designated altar. This arrangement was beneficial for the implementation of these obligations. The canons celebrating these Masses were never deprived of this benefit, and this benefit was also part of the vows of the canons who were pastors and penitentiaries, who enjoyed a special endowment, separate from the common Mass.

In the year 1885, the chapter decided that the celebration of these Masses should be considered a voluntary obligation, leaving the corresponding alms in the common Mass, which were received as revenues for the Mass, to which the canons, who did not participate in the Mass, had no right. The custom invoked refers only to the year 1886, and is limited to the eight Masses that are recorded in the register. From this single fact, no successors can derive any claim.

[*Latin ed. p. 661*]

IPPOREGIEN. 661 Once these points were admitted, contrary arguments, whether derived from law or from custom, were completely refuted. Having established these premises, the question arose as to how to respond to the petitions. RESOLUTION. The Sacred Congregation, after deliberation on January 23, 1892, decided to respond: "It is permissible to grant dispensations for the celebration of Masses in such cases." MELVITA MISSES FOR THE PEOPLE. On April 9, 1892, Session 24, chapter 12 concerning reforms. SUMMARY OF THE CASE. Leopold Farrugia, the parish priest of the church in the town of Hompesch, commonly known as Casal Zabbar, in the Diocese of Melvita, presented a case to the Sacred Congregation. He stated that "in his parish, with the exception of himself, the parish priest, who is obligated to serve the needs of his church, no member of the clergy is permanently assigned. However, on Sundays and feast days, it is customary to celebrate two Masses, as is the practice in collegiate churches, the first being said very early in the morning, without any ceremony, in which the Gospel is explained and applied to the people; the second, which is celebrated later in the day, at the third hour, and

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is solemnly chanted with ministers, the presence of the clergy, etc., and this Mass is called the parish Mass, as is customary in collegiate churches. "Furthermore, in this parish, on certain more solemn feast days, certain arrangements are made for the celebration of this solemn parish Mass, which were likely instituted so that the celebrations of these feasts would not be interrupted due to a lack of clergy. Indeed, it is true that on the days of the feasts of Easter and Pentecost, which are among the most solemn, before this arrangement was made, no solemnly chanted Mass was celebrated, and furthermore, the Ordinary has repeatedly ordered during canonical visitations that..."

[*Latin ed. p. 662*]

662 "The clergy are to attend the functions, but under penalty only of deprivation of the common emoluments for the week immediately following." Furthermore, having stated these things, he recalled that, although "the Mass for the people is a real and personal obligation," nevertheless, "Benedict XIV, in the Constitution *Cum semper*, established certain exceptional cases in which it suffices that the Mass for the people be celebrated by another, one of these cases being when the parish priest is also a canon." From this, he requested: "I. Whether the exceptional case for canons who are parish priests can also be applied to a simple parish priest, so that, with a legitimate foundation, the parish priest can, on similar feast days, celebrate a solemnly chanted Mass and substitute another for the Mass for the people. II. And, negatively, whether he can celebrate a solemnly chanted Mass with application for the people, and substitute another for the intention of a benefactor. III. And, negatively, regarding both, he humbly requests a special dispensation for the major feasts and for Masses that have some additional blessing, so that the decorum of the functions may be maintained." The Bishop, as is customary, was asked, and reported that it has been the practice in this Diocese, from time immemorial, to celebrate a conventual Mass with singing on all Sundays and feast days in the parish churches, apart from the one that the parish priest usually celebrates at dawn, and in which he proclaims the Gospel; however, for reasons which will be explained below, he considered that there was no sufficient reason why the parish priest should, on these feast days, either substitute another for the celebration of the Mass for the people, or change the application. Nevertheless, he added his favorable vote to the request expressed in the third place.

Disputatio Synoptica: WHAT CAUSES PARISH PRIESTS TO FEAR. Regarding the first doubt, it is certain that, although parish priests are obligated to celebrate the Mass for the people assigned to them, nevertheless,

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this obligation...

[*Latin ed. p. 663*]

The dispensation ceases to be obligatory if a just cause arises. Indeed, in Mechlin, on September 25, 1847, when the Sacred Congregation inquired under number 3: "Whether the parish priest is obliged to offer the Sacrifice of the Holy Mass for the people if no legitimate impediment prevents him, or whether another, for example, a vicerector or priest, can fulfill this office;," the response was: "Affirmatively to the first part, negatively to the second, except in the case of true necessity and with a concurrent canonical reason." This was also defined in Viterbo, on March 3, 1708, in response to question 2 in the Commentary; on May 2, 1720; in Silva Ducis, on March 11, 1843; and recently in Policastro, on December 14, 1872, in response to question 3. Therefore, the entire question seems to be reduced to this: whether the cause presented by Archpriest Farrugia is to be considered among the canonical reasons. Furthermore, as he himself indicated, in the celebrated Constitution *Cum semper oblatas*, § 17, Benedict XIV ordered that those who, besides their canonical duties or benefice, exercise parochial care in the same or another church, should generally apply the conventual Mass for the benefactors of the church, and substitute another who celebrates and applies the Mass for the people on that very day. This, moreover, in principle, could be said to apply even to the conventual Mass, and it would not be entirely inappropriate to invoke the principle of law that "where the reason is the same, the legal provision should be the same." Furthermore, it should be noted that, although the celebration of solemn Masses is not considered among the parochial rights, it is derived from *De Luca De parochis*, book 3, chapter 30, as well as from several resolutions of the Sacred Congregation, that it pertains to the parish priest, in so far as he is the rector of the church. In Mantua, *Iurium parochialium*, July 3, 1676; *Nullius* or *Nonantola*, February 17, 1685; Bologna, November 17, 1691; Reggio, August 5, 1719, etc. From this, it could be argued that, just as parish priests are permitted to substitute another in the offering of the Mass for the people, in order to fulfill the obligations of their canonry or benefice, so they should not be prohibited from the same substitution, whenever they wish to exercise the duties pertaining to the rector of the church.

[*Latin ed. p. 664*]

664. MELEVITANA. To this is added that the obligation of offering the Mass for the people, as stated in Session 23, chapter 1, of the Council of Trent, entitled "De Reformatione," is particularly emphasized, where it is clearly stated by divine precept that "those to whom the care of souls has been entrusted must recognize their flocks, offer sacrifice for them, and nourish them with the divine word, the administration of the Sacraments, and the example of all good works; they must also show paternal care for

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the poor and other miserable persons, and undertake other pastoral duties." Indeed, since these parts of the parish office are described together and as if of the same "nature and order," it follows that each of them should be urged with precisely the same manner of execution. For those of equal standing have the same reasons and regulations; De Luca, *De Emphit.*, discourse 50, n. 7, at the end; *Rota Juris honorifici* concerning petition 24, March 1702, § Q. Therefore, it would not seem unreasonable to say that the duties of which the Council of Trent speaks, although they undoubtedly burden the parish priest, can be carried out either by himself or by a substitute, as daily practice shows. Therefore, it would not be entirely wrong, at least in principle, to agree with the opinion of Cavalleri, who in Volume 3 of his works, chapter 8, paragraph 15, number 3, states that "it is not necessary for parish priests to be so scrupulous in this matter, but they can often provide a substitute even for a slight reason." And if, despite this, the Most Eminent and Reverend Fathers should decide that the parish priest of Casal Zabbar should not use another minister in the celebration of the Mass for the people, then perhaps the faculty of transferring the Mass should not be granted to him, as is discussed in the second doubt. Indeed, it has been determined, according to what is stated by St. Alphonsus in *Tractatus de Sacram. Euch.*, book 6, number 321, that the exchange of Masses is permissible, provided that all reprehensible gain is removed; and the same St. Doctor states that this is the opinion of the Sacred Congregation. Nor would it be objected that the requested exchange would be contrary to the will of the pious founders. For if, as the parish priest stated, such legacies were more likely "instituted so that the celebrations of these solemnities would not be interrupted due to a lack of clergy," then...

[*Latin ed. p. 665*]

665. It is desired that the celebration [of Mass] not be lacking, and that a pious disposition always achieve the intended purpose. Furthermore, it can also be observed that a Mass celebrated with less elaborate singing, offered for the souls of the departed, may bring forth fruit; therefore, one should perhaps not fear any injury to justice from this. Indeed, if the decorum of the sacred function were to be increased through the ministry of the parish priest, and if the people were to gather more frequently for the solemn Mass, it would be fitting to hold that such a change would more fully achieve the testator's will. Moreover, if the strictness of the law were to suggest that all these things should be set aside, the archpriest requests that he be granted, by a special indult, the permission to celebrate the solemn Mass on the major feast days and whenever any blessing is attached to the Mass. He does not indicate whether he intends to carry this out by substituting another priest for the Mass for the people, or by changing the application; but if prayers are included, the Most Reverend Fathers will decide on the matter. Regarding the opportunity for grace, the Bishop

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writes: "Truly, in the major solemnities, I believe it can be granted to the priest the faculty of saying the conventual solemn Mass, especially if some blessing is attached to this Mass. For, as far as the parish priest is concerned, as the rector of the Church, it seems fitting that he should sing the Vespers and Matins on such solemnities, and that he should also say the conventual Mass. Thus, although the blessings of candles, ashes, and palms do not strictly pertain to parochial rights, according to the Sacred Congregation of Rites, January 12, 1704, in this case they pertain to the parish priest as the rector of the Church in which such functions are usually performed."

WHAT IS DONE AGAINST THE PARISH PRIEST. However, several things are to be noted against the parish priest. And first of all, it is placed beyond all doubt that the obligation by which parish priests are bound to celebrate the sacred Mass for the people is personal. "On all Sundays and feast days of the week," says Pitonius, *Discipline Ecclesiastica*, 142, no. 15, "the parish priest is bound to celebrate it himself, unless he is found to be hindered by a just cause." To this, several decisions of the Sacred Congregation of the Council are added, and especially...

[*Latin ed. p. 666*]

MELEVITAN, Fiesole, June 16, 1770, and January 26, 1771, concerning which, see below; Castelo Branco, July 15, 1789; Tivoli, November 21, 1801, regarding the Application of the Mass for the people; and recently, Claromont, proposed among the suppliant petitions, April 9, 1881. From these, it is furthermore deduced that not any cause whatsoever suffices to allow a parish priest to entrust the application of the Mass to another, but that canonical reasons are required, and that only cases of true necessity are admitted. Nor could any argument be adduced against this from chapter 1 of the Decrees concerning Reforms, Session 23 of the Council of Trent, in which pastoral duties are enumerated together, because the obligation of offering the sacrifice for the people arises from the office of mediator between God and the flock entrusted to him, as the Apostle states in chapter 5 to the Hebrews, as unanimous teachers hold. However, there is a difference between the application of the Mass for the people and other parochial duties, in that in these, namely preaching and the administration of the Sacraments, it is sufficient that the people attain the desired effect, whether these duties are performed by the parish priest or by others; but in the offering of the sacrifice, not only must the effect be considered, but also the mediator's office must be fulfilled, which cannot be accomplished by others. Sánchez, in select. de Sacr., disp. 47; Pasqualigo, De Sacr. Missae, vol. 2, quaest. 855, etc. Indeed, with these things established, the reason presented by the archpriest Farrugia did not seem to be either canonical, nor to demonstrate a true necessity. Let the Bishop of Melevitan be heard: it is certain that a parish priest legitimately impeded can entrust the Mass for the people to others; S. Congr. Rituum, July 22, 1848. However, the

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conventual Mass, which is recited in the parochial churches of this Diocese on all Sundays and feast days of the year, does not seem to be a legitimate reason by which a parish priest, if he were to say such a Mass, could entrust the Mass for the people to others. For neither the episcopal decrees confirming this practice, nor the institution mentioned in the appeal of the parish priest, require the parish priest to celebrate the aforementioned conventual Mass on those days. There are indeed obligations which can be sufficiently fulfilled by another, and especially by the Vice-parish priest, as is customary in other diocesan parishes. Otherwise...

[*Latin ed. p. 667*]

In the diocese of Melefitana, a parish priest is bound by sacred canons to celebrate Mass for the people himself. Furthermore, the Holy Congregation of Councils, in Fesole, on June 18, 1770, and January 26, 1771, responding to inquiries: I. Whether a parish priest, on Sundays and other feast days, in the presence of a corpse, can celebrate Mass for the deceased and postpone the Mass for the people to another day; and II. Whether, at least, he can have another priest celebrate Mass for the people in such a case, responded: To both inquiries, negatively. However, if the celebration of Mass at funerals, in the presence of a corpse, is not a sufficient reason for the parish priest to be substituted by another in the Mass for the people, much less will it be a sufficient reason for the celebration of a conventual Mass on Sundays and feast days throughout the year. Nor does this apply to a parish priest who, by celebrating a conventual Mass on a feast day, can entrust the Mass for the people to another. The reason for this difference lies in the fact that the conventual Mass is a primary obligation arising from the endowment for the canons; while the parish priest's duty is something accessory to the endowment. Hence, the conventual Mass is a legitimate reason for another to be substituted in the Mass for the people. This cannot be asserted regarding the parish priest, to whom the obligation to celebrate Mass for the people is imposed as a primary duty by his office. Furthermore, it may be added that the solemn Mass which is usually celebrated in the parishes of the diocese of Melefitana on feast days, although it is called "conventual" there, is not truly such. For it is known from the Constitution of Benedict XIV, *Cam semper oblatas*, that it is substantially proper to the conventual Mass that it be applied for the benefit of benefactors in general, and not specifically; which is not the case in the parish of Casal Zabbar, where those Masses are usually celebrated for the fulfillment of specific legacies. In addition to this, the conventual Mass, being a burden only of the chapters of churches, cannot be celebrated in churches that lack the title of collegiate, as held by the Holy Congregation in Montisfalisci on February 12, 1718, in Praenestina on April 17, 1779, and in *Nullius Sublacen* on July 7, 1781,

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etc.

[*Latin ed. p. 668*]

668. Regarding the alteration of stipulations, while it may sometimes not be reprehensible, it does not seem that it can be done arbitrarily, especially if it involves derogating from the will of pious testators. For it is a settled principle in both laws that the supreme wills must be fulfilled precisely, as the Rota states in decision 153, paragraph 5, concerning Riminaldo: "that vain things should not be made the judgments of the dead." Furthermore, it is not permissible to admit that there is no difference between a Mass that is read and a Mass that is solemnly celebrated; for, as Fagnanus writes in *Cap. De Creatura. De Celebr. Missae*, number 9: "the soul of the deceased receives more help from a solemn Mass celebrated in the choir with the assistance of several priests than from a *privata* Mass." Therefore, it seems lawful for the Prelate to conclude: I see no reason why, to the founder who ordered a Mass with singing, a Mass that is read should be substituted, so that the parish priest may have the convenience of fulfilling his strict duty sufficiently, while it can be celebrated by another priest. All of these things that have been related thus far, while demonstrating the insufficiency of the reasons presented by the archpriest, would indeed seem to obstruct the grace to which one ultimately appeals. The matter was proposed in the Congregation on April 9, 1891, in the Diocese of Celimonten, where it was customary for a Mass to be celebrated for the people on each festive day with singing, so that the parish priest, often burdened with many cares, frequently entrusted this task to another priest. In response to the Bishop's inquiry: 1. Whether the aforementioned urgent custom should be considered a sufficient canonical reason for the parish priest to entrust the Mass for the people to another priest to celebrate in his place; 2. Assuming that it is not a sufficient reason, whether permission should nevertheless be granted for the sake of expediency: The Sacred Congregation responded: 1. Negatively. 2. It does not seem expedient. With these considerations, the following doubts were raised: I. Whether the parish priest of the place of Casal Z abb ar, on festive days in which a solemn Mass is to be celebrated for a particular legacy...

[*Latin ed. p. 669*]

MELEVITANA 669: It is asked whether, in a certain case, another priest can be appointed to say Mass for the people. And whether, negatively, on the same days, he can celebrate a votive Mass with application for the people, and substitute another Mass for the intention of the benefactor. And whether, negatively, his prayers are to be received in such a case. RESOLUTION. The Sacred Congregation, having considered the matter under the date of April 9, 1892, judged it fitting to respond: To the first and second questions, negatively. To the third question, affirmatively, according to the

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judgment of the Bishop. FROM WHICH THESE CONCLUSIONS ARE DERIVED: I. The Mass for the people, being a real and personal obligation, must be applied by the parish priest himself, unless there is a canonical impediment, or a true necessity. II. For while other parochial duties can be delegated to others, the people obtain the effect; but in the offering of the sacrifice, not only is the effect considered, but the office of the mediator must be fulfilled, which cannot be accomplished by others. III. The canonical curate can delegate to others the obligation of applying the Mass for the people whenever, because of the choral office, he must say the conventual Mass, as this is the principal duty of his benefice, to which the Mass for the people is accessory. IV. The proper nature of the conventual Mass is that it be applied for benefactors in general, and not specifically for the particular intention of a benefactor. V. Masses celebrated in the choir do not take precedence over the nature of conventual Masses, but are usually for the particular intention of a benefactor; however, the parish priest has obtained the faculty to say these conventual Masses on greater solemnities, and especially if some blessing is attached to these Masses.

[*Latin ed. p. 670*]

670 OF THE CANTON OF TICINI, "or LUGANO." CONVENTUAL MASS. April 9, 1892. Through Brief Prayers. The Apostolic Administrator of Ticini, in a communication transmitted to the Sacred Congregation concerning his Church, has the following in the chapter concerning requests: "It is asked: 1. Whether the custom can be maintained, which prevailed in the cathedral church of Saint Lawrence in Lugano, that the conventual Mass be sung only on feast days, even when it is prescribed, and that on other days it be read while the small hours are recited in the choir. Since custom alone is not sufficient, I request that a special indult be granted for this. The canons are few. Moreover, several of them must perform other duties for the good of the Church, for example, as professors in the diocesan seminary, and as officials in the episcopal curia, and it would be a serious detriment to their affairs if they were to delay their duties because of the requirement that they attend Mass as prescribed by common law. " "It is asked: 2. Whether the aforementioned custom can be maintained, according to which, in place of the Mass, the office of the day is celebrated on Saturdays, and the votive Mass of the Blessed Virgin is sung; and likewise, whenever a Mass for the dead must be sung for some reason, the aforementioned celebration of the office of the day is performed by another canon, who celebrates it at any hour without the intervention of the chapter." "It is asked: 3. Whether it is permissible that, during the entire winter season, when the aforementioned canons recite the hours in the lower sacristy, the conventual Mass be celebrated in the church at any hour, so that the canons may hear it." "It is asked: 4. Whether the custom can be maintained, according to which, when the rubrics of

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the missal require a second or third Mass to be sung, it is read at any hour, if the chapter is not present. Furthermore, to the extent that custom is not sufficient, for the sake of brevity, let this be considered a summary of the facts."

[*Latin ed. p. 671*]

In the Canton of Ticino, or Lugano, concerning what was requested in question number 1, I ask for Apostolic Indult number 671 regarding the Disputation of the Synodal Optic. A few observations have been made concerning each point; first, the conventual Mass must be celebrated with singing, indeed, not only the first Mass, but all conventual Masses should be sung if, according to the rubrics, several conventual Masses occur on the same day; and the canonical hours must be recited at the proper time, never during the time of the conventual Masses. It is well known that the Praeeminentiae of Urbisvetana, dated August 5, 1737, address the doubts, in question II: "Whether, when several Masses are prescribed by the rubrics to be celebrated and sung in the cathedral church, it is permissible to celebrate one of them silently in the case: S. C. responded: No." However, the practice of reading the Mass while the canonical hours are being sung or recited clearly contradicts the rubrics, as has been declared many times by the Sacred Roman Congregations, as in Oseen, March 2, 1620, and more clearly on September 27, 1817, with the following question: "Whether a custom, of unknown origin, of reading the Mass while the First Hour is being said in the choir, can be tolerated: the response was: No, and the rubrics must be observed." But whether here a custom can appropriately be invoked regarding the use of reading the conventual Mass, let the Most Reverend Fathers judge. Certainly, there are examples in which the Sacred Congregation has granted indulgences for conventual Masses to be celebrated without singing, due to the small number of canons or for other reasons, as was done in Hortana on July 5, 1631, and in Firmana on April 19, 1845; but it has consistently denied permission for the recitation of the Divine Office to be performed during the time of these Masses. Regarding the second and third points, it should be noted that the conventual Mass is a principal part of the Divine Office, and therefore not only does the responsibility for its celebration belong to the chapter, but also personal attendance, as the very word "conventual" indicates. Gonzalez, part 7, De cleric. non resident. Benedict XIV, De Syn.

[*Latin ed. p. 672*]

672 GANTONIS TICINI, or LÜGANO. Dioc. cap. 13, c. 9. In this matter, the Sacred Congregation of Rites has always acted with rigor, and has rather permitted the service of the choir to be performed not by all, but in turn, and has restricted it to feast days only, so that the entire office, which must be fulfilled on those days, is not omitted, as is evident from

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several examples cited in the *Grossetana*, Service of the Choir, November 22, 1856. It must, however, be remembered that the conventual Mass, according to the prescribed office in the rubric, must be said in the choir, as the Holy Roman Congregations have often decreed, and we know that they have repeatedly issued decrees to this effect, as in *Oseen*, March 26, 1592, to question 7; in *Perusina*, August 9, 1766; in *Gadicen*, January 22, 1768; and in *Imolen*, July 7, 1759, apud Oardellini, stating that it must be celebrated, not arbitrarily, but after the third hour, or at the hour established by the rubrics of the Missal, even in spite of an ancient and memorable custom to the contrary. Furthermore, another response of the same Sacred Congregation in *Barchinonen*, dated March 24, 1860, to point 1, could claim a place here, in which a custom was disapproved, by virtue of which the conventual Mass was then sung only by the chapter when no anniversaries were to be celebrated, but otherwise it was usually sung by the appointed chaplains in a chapel located under the main altar. Nevertheless, it should not be overlooked that the Sacred Congregation, in *Rothomagen*, December 16, 1854, granted a grace to the canons of that metropolitan church, who were accustomed to attend the solemn parish Mass on feast days, to which a large congregation of the people came, considering the particular circumstances, allowing the translation of the conventual Mass to another day within the week, to be determined at the Archbishop's discretion, for a time. With these things now related, the question proposed by the Apostolic Administrator of Ticino, under number 4, is at least partially answered. It could also be added, according to what is stated by Benedict XIV in Constitution *Cum semper oblatas*, n. 22, that the second and third Masses are obligatory if a custom exists: if not, they are not to be commended. Regarding these Masses, Lucidi, Vol. II, 3, relates, chapter, article n. 135: "And if, at times, the same Sacred Congregation..."

[*Latin ed. p. 673*]

IN THE DIOCESE OF TICINI, OR LUGANO. 673. Some have proposed a certain measure concerning this matter, and this has been brought about to the point that the second and third Masses are permitted to be celebrated without singing. "The reasons presented by the Prelate to obtain this concession, especially considering the condition in which the recently established diocese finds itself, certainly appear to be of great importance. However, whether these reasons are sufficient to bend the strictness of the law, it was left to the prudence and wisdom of the Most Eminent and Reverend Fathers to decide." Having considered these matters, it was asked what should be answered in response to the requests. RESOLUTION. The Holy Congregation, having been informed of the matter on April 9, 1892, decided to respond as follows: I. For the concession, if the circumstances persist; provided that the canonical hours are not recited during the conventual Mass. II. Negatively. III. It cannot be tolerated. IV. Considering

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the particular circumstances, and if these circumstances persist, for the concession, according to the request. THE FOUNDATION IN TRENT. On April 9, 1892. Through summary requests. The Bishop of Trent recently reported that the priest Frederick Marinelli, formerly parish priest and dean of the town of Male, who died with the highest praise on November 10, 1694, and whose testamentary dispositions were dated August 5, 1698, had decreed that a benefice should be established in his parish church at the altar of Saint Anthony, and that the sum of "ragnesi 240, which are equal to 216 Austrian guilders, or 470 Italian lire," should be assigned to it as an endowment. The testator also wished that the beneficiary, chosen from among the priests of the parishes of Male and Livo, should celebrate the Holy Sacrifice six times each week, according to the founder's intention, and should also undertake the duty of hearing the sacramental confessions of the members of the confraternity of Saint Anthony. SUMMARY OF THE MATTER. Acts, Volume XXIV, page 187, number 4.

[*Latin ed. p. 674*]

674 In Trent, as the Prelate recounts, through the same testament, he established a stipend for a young man engaged in studies, with the added condition that whatever remained to this purpose from the revenues of his goods should be allocated for the celebration of Masses in honor of the aforementioned founder and his deceased relatives. Since, however, for many years these Masses were not celebrated, despite the protests from the parish priests of Male and Livo; and nothing could be obtained from the administration; therefore, twenty years ago, the Ordinary proposed that a sum of 4530 florins be contributed from the funds for the stipend, as a benefit; through this contribution, the estate would once be freed from the burden of the Masses that the testator had imposed upon it. The Sacred Congregation, on June 21, 1888, granted the Bishop the power to accept this sum of money: which was indeed delivered from the fund for the stipend. Regarding this matter, the benefice now possesses an endowment of 8000 florins. Since, according to what has been stated, the benefice is burdened with the obligation of six Masses per week in the church of Male; the parish priest of that place requested that one of the six Masses be celebrated in that church on all feast days at the *octava* hour, for the benefit of the faithful. However, the priest who has the right to this benefice refused to undertake this obligation. Nevertheless, since the benefice has doubled its revenues through this transaction, and the spiritual good of the faithful demands it, the Bishop seeks the power to impose such an obligation upon the aforementioned benefice. A Synopsis of the Objection to the Imposition of a New Obligation: Perhaps the most well-known rubric of title 12, book 3 of the Decretals, "that ecclesiastical benefices be conferred without diminution," might seem to oppose the imposition of a new obligation. This is because it concerns a priest who has the right to the investiture of this benefice,

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and to whom, therefore, the privileges granted by canon law to patrons might be beneficial. However, it is true that the revenues of the benefice have recently experienced a not insignificant increase; but it is important to remember, according to the will of the founder, that what remains after the payment of the stipend is intended for Masses.

[*Latin ed. p. 675*]

TRIDENTINA 675 - it is necessary to increase the endowment. Furthermore, it is evident that the intention of the deceased parish priest, Marinelli, was that provision be made, not for the benefit of the people, but for the suffrage of his own soul and that of his relatives. This is so clear that, in the year 1888, the Bishop, requesting from the Sacred Congregation that the matter be settled and that the sum offered by the government be accepted and added to the endowment, wrote the following: "The endowment could be burdened with a certain number of Masses; which Masses would be celebrated according to the intention of the founder." And although the Sacred Congregation left the entire matter to the judgment and conscience of the Bishop, with all the necessary and appropriate faculties, it is presumed that it responded affirmatively because the request appeared to be in perfect harmony with the will of the testator. Therefore, only two objections could stand in the way, namely, that the suffrage should not be diminished contrary to the disposition in the text in can. ultima voluntas 13, question 2, and that it should not be extended from one thing to another beyond the intention of the Sacred Congregation, as Corradus states in Praxi disp. apost. book 1, chapter 5, number 4. Nevertheless, it must also be noted that it is not new that the pious will of testators may be changed, where a greater utility exists for the circumstances, or where just causes demand it, as the Sacred Congregation has repeatedly decided in response to the requests of the Sacred Council of Trent, Session 22, chapter 6, concerning reforms. Among such causes, the public necessity is certainly to be considered, as Pitonius states in De controv. patron, allegation 50, volume 1, and Pignatelli states in Consult. 148, number 4, volume 4, etc. Furthermore, the Sacred Congregation has often accepted the benefit of the people as a suitable reason for changing the will, as can be seen in Perusina, May 12, 1764, in Piacentina, concerning the commutation and transfer of the burden, June 21, 1794, etc. Moreover, since the Bishop is to be considered the best informed about the spiritual needs of his people, it could not be doubted that the benefit of the faithful could require a change of will. Nor should opposition to the choice of beneficiaries be considered, since it appears to be entirely unreasonable. If a benefit is derived from the increased endowment, it is only fair that some inconvenience be borne.

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Indeed, if one considers,

[*Latin ed. p. 676*]

676 In Trent, the income from the benefice, after deducting the sum of 4530 florins, has doubled, a fact which the Ordinary deems most favorable; and, beyond what was requested, perhaps another burden should be imposed. This is all the more so because some, such as Oecolampadius, *Loci Communes*, I, 3, n. 146 and following, teach that it is not permissible for chaplains to perform the sacred mysteries at times and hours of their own choosing, but rather they must celebrate them for the benefit of the church, according to the mandate of the one to whom the right to arrange the Masses in that church belongs. In light of these considerations, the question was raised as to what response should be given in prayer. RESOLUTION. The Sacred Congregation, having considered the matter on April 9, 1892, decided to respond: To the Bishop, it should be made clear that, in addition to the obligation of celebrating Mass at 8 o'clock on feast days, he should also order the celebration of a suitable number of Masses each year, according to the intention of the founder. DECREE concerning the profession of faith to be submitted by each parish priest, upon promotion. The Most Reverend Bishop of Argentinensis humbly explains that, up to this day, in this Diocese, parish priests who hold permanent benefices have not submitted the profession of faith before the Bishop, or, if he is prevented, before the Vicar General, but before a presbyter delegated by the Bishop; while, on the other hand, removable parish priests, or vicars, have not submitted any such profession of faith at all. Since, however, from various decrees of the Sacred Congregation, it is required that not only those holding a canonical prebend or title, as they say, permanently, but also removable parish priests must submit the profession of faith, prescribed by the Council of Trent, before the Bishop himself or his Vicar General, and since, due to the vastness of the Diocese, he humbly requests both remedies for the past, and an Apostolic Indult, by virtue of which he may be able to appoint, for the purpose of receiving such a profession of faith, not only Deans habitually, but also, in particular cases, if it seems useful, other priests of his choosing.

[*Latin ed. p. 677*]

RESCRIPT 1837. On March 9, 1892. From the Sacred Congregation of Bishops and Regular Canons. The Cardinals of the Council of Trent, by virtue of the powers granted to them by Our Holy Lord, having previously granted absolution with regard to past actions, and a remission of fruits received, benignly granted to the Bishop of Gerona the following: for a period of ten years, he may delegate Vicars Forane, or Deans, or others holding any office, to receive the profession of faith from parish priests who, without grave inconvenience, cannot visit the Bishop himself, or, if he is hindered, his General Vicar. Pref. L. SALVATI, Secretary. A. CARD. EPISC.

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SAB., from the Sacred Congregation of Bishops and Regular Canons. REGARDING THE FACULTY OF COLLECTING ALMS: A SUMMARY OF THE CASE. In the month of September 1890, the Bishop of Gerona, having presented a petition to the Sacred Congregation of Bishops and Regular Canons, explained that the Provincial Commissary of the Order of Friars Minor Observant of Saint Francis, residing in a convent of that Order established in the city of Vich, maintained that he could send his subjects to seek alms in all dioceses within the limits of his province, namely, Catalonia and Minorca, where no convent of his Order exists. He considered that he could do this without needing to obtain the consent of the Ordinaries, and that the collectors did not need to show the Ordinaries a license from their superiors. The reasoning of this Provincial Commissary, which appeared to be contrary to certain resolutions of the Sacred Congregation of Bishops and Regular Canons, as well as of the Sacred Council, could not be pleasing to the Bishop of Gerona. Therefore, in order to prevent further issues, he...

[*Latin ed. p. 678*]

678. GERONA. It was requested that the Sacred Congregation declare that it is not permitted for Minor Observants to collect alms within the Diocese of Gerona, because the aforementioned Religious have no house of their Order present in that same Diocese.

Synopsis of the Dispute. The Bishop of Gerona, as he demonstrates, adduces three principles, drawn from the teachings of the common law authorities, and especially from the solemnly declared pronouncements, first of the Sacred Congregation of Bishops and Regulars, and then of the Sacred Congregation of the Council, to prove that no right belongs to the Minor Observants to solicit alms within his Diocese. And these principles are:

1. "Regulars who, by the institution or faculty of the Apostolic See, are permitted to solicit or beg alms, are not required to request permission from the Ordinary to solicit alms throughout the Diocese, since in the erection of monasteries, this permission is tacitly granted to them by the Ordinary." Sacred Congregation of Bishops and Regulars, to the Bishop of Casale Monferrato, October 6, 1597.

2. "The Congregation judged that the Council does not prohibit Regulars from soliciting alms, but not others; however, they are not permitted to solicit alms in any way on behalf of and by the authority of others; but those who solicit alms outside the place where the monasteries are located, within the same Diocese, must obtain the permission of their Superiors from the Ordinary." Sacred Congregation of the Council.

3. "The Sacred Congregation judged that the brothers of mendicant Orders cannot in any way be prohibited by the Bishops from soliciting alms themselves within the Dioceses where they have houses, but only if, when they wish to solicit alms outside the places where the monasteries exist, they must show the permission of their Superiors to the Ordinary; but if

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they wish to solicit alms outside the Diocese, they must also obtain the consent of the Ordinary." Sacred Congregation of the Council.

Based on these principles established in law, the Bishop argues that it is beyond all doubt that mendicant Regulars require the consent of the Ordinary if they wish to solicit alms in any Diocese in which there does not exist a house of their Order.

RIGHTS OF THE BISHOP.

[*Latin ed. p. 679*]

GERUNDEN. 679, or the Diocese, whether situated within or outside the province of the Order. For, according to the Bishop's judgment, the consent of the Ordinary is not required only when a community exists in that Diocese in which the Religious wish to reside. From this, the Bishop concludes that no weight whatsoever should be given to the argument presented in the observations of the Reverend Procurator, namely that the consent of the Ordinary is not required for residing, if a community is found within the limits of the province of the Order. However, concerning the practice of residing, invoked by the Reverend Procurator and formerly called "antiquum," the Bishop observes that it cannot be affirmed or denied whether it was in force in Spain; for, since the suppression of the Regular communities, a very long time has elapsed. Nevertheless, the Bishop notes that this practice or custom invoked by the Reverend Procurator is irrelevant, since it has been ascertained that, before the suppression, communities of the Minor Observance of the Order of St. Francis existed in all, or almost all, the Dioceses of Catalonia. However, with regard to the practice currently in force in the Diocese of Gerona, the Bishop states that, from the very first day he took possession of his See, or from the month of June 1878, he has always and consistently required that all Religious who do not have a community of their Order in his Diocese request permission to reside. This permission has been requested by the predecessor of the current Provincial of Catalonia, as well as by the superior of the community of the city of Vich. From the declarations of the Sacred Congregation of Bishops and Regular Canons presented by the Reverend Procurator to defend his alleged rights, it can be gathered that Religious residing in a Diocese must show to the Ordinary the permission of their superiors, whenever they collect alms in a place within their Diocese where their own community does not exist. But it cannot be deduced from this declaration that the consent of the Ordinary is...

[*Latin ed. p. 680*]

680. GERUNDEN. It is not required, if alms are collected in a Diocese, in which there are no religious houses. To all these matters, the Bishop adds that, in his Diocese, besides the fixed collections which are made in

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all parochial churches, there exist, by the favor of the work of the "Obolo di S. Pietro," two convents of Religious Capuchins, ten Religious Sisters, and also a college called "of Charity." These Religious and Religious Sisters, from these twelve convents and the aforementioned college, either by themselves or through others, very frequently traverse the Diocese, seeking alms. Therefore, so that these aforementioned collections may not be harmed, and so that so many Religious and Religious Sisters may not be deprived of alms for their support, the Bishop declares it to be just and fitting that the Minor Observants be prevented from collecting alms in his Diocese, unless some special reason dictates otherwise.

RIGHTS OF THE MINOR OBSERVANTS. On the contrary, the General Procurator maintains that each Order has the right to delegate its own Religious, so that they may seek alms in each Diocese within the boundaries of their province, and that these Religious, without the license of the Ordinary, indeed, even contrary to the same Ordinaries, may freely seek alms. However, before adducing the reasons which demonstrate such a right, he observes that it has been established that 1. the designation of the boundaries of each province or convent pertains to the Superiors of the Order, and has been permanently determined by them without any intervention of the Ordinaries, without consent, reclamation, or complaint; 2. that the Province in question, as before its suppression decreed by the Government, encompassed the entire region of Catalonia, and therefore the Diocese of Gerona, within its boundaries, and that, after its restoration, it has maintained and in the present situation defends the same division, and also all the rights and privileges which pertained to that Province, before the convents were subjected to the law of suppression.

[*Latin ed. p. 681*]

GERUNDEN. 681 Having stated the foregoing, the Procurator affirmed that the Superiors of the Order, or Provincials, throughout their respective provinces, and the local Superiors within the designated district of their own house, have the right to send out Religious men for the purpose of collecting alms, and that these do not require a special license or permission from the Ordinary. However, the Superiors are only required to show the regular license to the Ordinary in those places where there are no houses of their own Order. This is in accordance with ancient custom, confirmed by present practice. Regarding the ancient custom, it is asserted that there is no doubt about it, since when the senior members of the Religious Order, whether priests or laity, were questioned, they unanimously replied that they had never seen or heard of it being necessary to request a license from the Most Reverend Ordinary to collect alms within the boundaries of their own province or house, either from the Superiors of the Order or from their subordinates. Furthermore, the Procurator argues that this is also confirmed by present practice, by the fact that, although there are no

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houses established at this time in various dioceses within the designated provincial boundaries, the Bishops have nevertheless recognized the rights and privileges of the Superiors of the regular Orders, and the Superiors of the said Order have always maintained that no license is required from the Ordinaries for collecting alms, except in the case where they send out their own Religious men outside the limits of the province or house to collect alms. And this practice or custom must undoubtedly be held in high regard, as the Procurator observes, because it has its main foundation and strength in the Constitution of Clement XI, which begins "Exponi nobis" on July 8, 1617, in which the privileges granted to the Order of St. Francis by Pope Sixtus V in § VIII of the Golden Bull were confirmed, as well as the decrees issued by the Congregation of Bishops and Regular Canons, which were extended to other Regular Orders. Indeed, in the aforementioned Constitution, it is prescribed: "That the brothers of the mendicant orders should be licensed by the Ordinaries of the places, or by..."

[*Latin ed. p. 682*]

682. GERONA. To others, regular canons may not be prohibited from seeking alms by themselves, in the places where they have their convents, but only if they wish to seek them outside the places where their convents are located, they are required to show the license of their superiors, and these are confirmed and approved by Apostolic authority, and to them is added the inviolable strength of Apostolic firmness: *salva tamen auctoritate eiusdem Congregationis* [provided, however, with the authority of the same Congregation]. Whether such rights and privileges could be enforced in accordance with Apostolic Constitutions, and whether the mendicant orders, having been suppressed by law, were deprived of indulgences and the Minor Observances, is a matter of consideration. Indeed, the Procurator noted that: "No one loses a right because force is used against him." To this, another maxim of law adds: "What is done contrary to law must be considered void." Furthermore, since it is certain that the Province of Catalonia had many convents in the Diocese of Gerona before the suppression, it follows spontaneously from the aforementioned rules of law that such convents retained all the rights and privileges to which they were entitled before the aforementioned law of suppression. Therefore, the Province of Catalonia still has the right to send its religious to the Diocese of Gerona to receive stipends, without the religious being required to ask for and obtain permission and consent from the Ordinary of the Diocese. And this is all the more so if, with the Procurator, one considers that in the aforementioned Diocese of Gerona, before the law of suppression, there were some convents belonging to the Minor Observances. From what has been explained above, it follows that the Minor Observances of the city of Vich are to be considered as diocesan of Gerona, and that the resolutions of the Sacred Congregation, numbered 2 and 3, reported by the Bishop in

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this case, cannot be applied, and therefore are useless and irrelevant to the protection of their rights. It is not necessary to insist that this situation cannot be changed based on the supposed fact that some Provinces, after the suppression, have requested permission from the Bishop of Gerona to seek funds. Indeed, this fact is denied, or, at most,

[*Latin ed. p. 683*]

GERUNDA. 683. The Provincial writes that this was done, not because they considered themselves bound by any obligation, but rather spontaneously and out of obedience to the highest dignity of the Bishop. However, the Bishop's argument is of little weight, because the action of certain Superiors cannot have such force as to deprive the Order of the rights and privileges granted to it by the Supreme Pontiffs. And even less can the Order be deprived of the right to beg in the Gerona diocese by another fact, namely, that in the aforementioned diocese, several collections are made at fixed times, and that there are twelve communities, all of which live by alms. He asserts that this is not new in Spain, and that the same thing happens in other dioceses, but that it has never occurred to the Ordinaries of those dioceses to prevent Religious from collecting alms in their dioceses, or to impose a burden on the Religious themselves, requiring them to obtain permission from the Curia in order to be able to beg. From all of these things, it is clear as the midday sun that the Minor Observant Fathers of the Province of Catalonia, are not in the least bound by the Bishop of Gerona, and may freely request permission to beg, and therefore, the Provincial concludes, the decree of prohibition issued by the Bishop himself is null and void, and must be renounced. These points, having been presented to both sides, the following Question was proposed: Whether to the Minor Observant convents of St. Francis in Spain, it is permitted, without the consent of the Bishop, to beg in the Gerona diocese? RESOLUTION. After mature deliberation, the Sacred Congregation of Bishops and Regulars, on March 11, 1892, decided to respond: Negatively. FROM WHICH IT IS UNDERSTOOD: I. Regulars, who, by the institution or faculty of the Apostolic See, are permitted to seek alms.

[*Latin ed. p. 684*]

"684. GERONA. They may beg, but they are not required to request permission from the Ordinary to seek alms throughout the Diocese, since in the erection of monasteries, this permission is tacitly granted to them by the Ordinary. II. However, if they seek alms outside the place where the monasteries are located, within the same Diocese, they must show the Ordinary the permission of their Superiors. III. Brothers of mendicant orders cannot, in any way, be prohibited by the Bishops from seeking alms themselves within the Dioceses where they have convents. But if they wish to seek alms outside the Diocese, they must obtain the consent of the Ordinary.

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IV. In a case decided, the Minor Observant community of Vich was not able, without the permission of the Ordinary, to seek alms in the Diocese of Gerona, because in that Diocese they no longer have a convent. FROM THE LETTERS OF THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH, addressed to the Ordinaries of the United States of America, concerning the election of Bishops. Most Reverend and Venerable Fathers, it is certainly a matter to be referred to the most benign providence of God that in the most noble Republic of the United States of America, which we see flourishing so greatly in humanity and culture, the Catholic name has taken root and thrives, so that it has already attracted the attention of many citizens and foreigners, and seems to promise greater growth for the Church of God in the future. Therefore, since the benevolence of the Supreme Pontiff has wished to guide this Holy Congregation for the Propagation of the Faith, I have considered it my duty to devote the greatest care and concern to this young branch of the Church, so that, if possible, happy events may sustain the hopes that are given."

[*Latin ed. p. 685*]

I undertake this task with all the greater zeal, knowing that the most distinguished prelates are deeply concerned with this matter, and that they are diligently working to promote and safeguard the Catholic faith in their respective regions. This concern, which I share with these bishops, demands that I bring to their attention a certain practice that is gaining ground in the election of bishops, and to which timely remedies must be applied.

The most serious opinion on this matter has been declared by the Apostolic See in letters dated July 4th of the preceding month, addressed to the Most Reverend Archbishop of Baltimore, by Cardinal Rampolla, in the name of the Supreme Pontiff. For at that time, vain rumors had spread among the people concerning a proposed change in the structure of the Catholic Hierarchy in the United States, so that bishops elected by popular vote should be appointed to lead the Catholic immigrants from various European nations. The most wise Pontiff, wishing to dispel this unfounded opinion, which had stirred the minds of many, declared that the existing discipline in the election of bishops must be maintained in its entirety and inviolably. This matter is of such importance that no customs contrary to it should be tolerated.

Indeed, Your Eminence is aware that, on the occasion of vacant episcopal sees, various disturbances are often stirred up among the clergy and the Catholic people, which, experience teaches, are becoming more frequent and serious. And indeed, what now occurs in such cases is neither trivial nor obscure, nor of a kind that can be entirely overlooked by this Sacred Congregation. For in proposing candidates for the episcopal office, we frequently observe that the clergy and the people are swayed by consider-

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ations other than those prescribed by law; public newspapers are filled with disputes, and public and private meetings are held on the matter, in which each faction extols its own candidates and denigrates those of the opposing side. What most often fuels these disputes is the desire within each faction to have a bishop chosen from among its own members, as if private interests, rather than the benefit of the Church, should be the guiding principle in the selection of a suitable pastor.

Furthermore, while the Apostolic See everywhere seeks the good of the Christian people in appointing bishops, this is particularly true in the United States of America, where various...

[*Latin ed. p. 686*]

686 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: In Europe, peoples, establishing a new homeland here, coalesce into one people, and therefore form a single nation. Wherefore, since the norms for the selection of Bishops in the United States are accurately and wisely defined in the National Councils, and especially in the Third Plenary Council of Baltimore, it is necessary to diligently strive to ensure that all opposition to these matters is overcome. For those decrees, which are most fitting to the needs of the times and places, promulgated by the vote of all the Bishops of that jurisdiction, and confirmed by the authority of the Apostolic See, are certainly those which could not, for the sake of private individuals, be overlooked without a serious detriment to discipline. I have considered it my duty to communicate this to you, so that the emerging evil may be addressed before it grows further. Indeed, I wish that the clergy and the people in each Diocese should be primarily warned of the harmful consequences that such controversies entail, not only because they disrupt the due harmony of minds and weaken the firmness of ecclesiastical discipline, but also because they give offense and scandal to those who are not Catholic. Furthermore, in the name of the Sacred Congregation, the Bishops should openly declare that it is utterly futile to pursue matters that go beyond the prescriptions of the Councils, since the Apostolic See has nothing older than the duty to defend the ecclesiastical law, which is the guardian of order and the bulwark of peace. In the meantime, I pray to God that He may preserve you for a long time. Given in Rome, from the offices of the Sacred Congregation for the Propagation of the Faith, on the 15th of May, 1892. Your most devoted servant, MIECISLAUS CARDINAL LEDÓCHOWSKI, PREFECT. IGNATIUS, ARCHBISHOP, SECRETARY.

[*Latin ed. p. 687*]

687 FROM THE CONGREGATION FOR RITES OF THE MINOR ORDER OF ST. FRANCIS, CAPUCHIN. Doubts raised on the occasion of the publication of the liturgical manual of the Capuchins. During the prepa-

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ration of the work, entitled "Liturgical Manual for the Use of the Brothers Minor of St. Francis, Capuchins," certain questions arose among the rubricists of that Order concerning particular rites or rubrics contained in the same work.

To thoroughly resolve such questions, the Reverend Father Fr. Bruno of Vintia, Procurator and General Commissary of the aforementioned Order, deemed it fitting to propose the following doubts to the Sacred Congregation for Rites, namely:

Doubt I. Whether it can be supported by word or writing that the Capuchin Brothers are exempt from the obligation of observing those Decrees of the Sacred Congregation for Rites, which are contrary to the Constitutions of the Order, and this because the aforementioned Constitutions have been approved by the Apostolic See?

Doubt II. And, supposing the answer is negative: Whether the falsity of an opinion must necessarily be noted in the text by the authors, perhaps those who defend such a view?

Doubt III. Whether the Capuchins can lawfully perform incensations at the altar during Conventual Masses, or other Masses, which are celebrated without prepared ministers and without singing?

Doubt IV. Whether, given that sometimes Mass is sung with a Deacon and Subdeacon, these can simply be vested with an alba, cincture, stole, and maniple, respectively, without a dalmatic and tunic, respectively?

Doubt V. Whether the use of singing the Mass in a quasi-psalmodic, or semi-tone manner, can be tolerated?

Doubt VI. Whether the custom, prevalent in some places, can be tolerated, namely that in the Conventual Mass, the acolyte, or minister, is not vested in a cotta?

Doubt VII. Whether Conventual Masses without singing can be considered solemn, either with regard to the collections, or with regard to the prayers at the end of Mass to be recited by the mandate of Our Holy Father Leo XIII, or with regard to the number of candles lit on the altar?

[*Latin ed. p. 688*]

688 FROM S. G. RITUUM, Question VIII. Whether, on Sundays, when a priest is to celebrate the Conventual Mass, he may approach the altar without the chasuble, or planeta, for the purpose of making the aspersions, and afterwards put on the planeta on the left side?

Question IX. The author of the Manual, of whom we are speaking, asserts that, among the Capuchins, when the Blessed Sacrament is distributed with the blessing, a superpellice is used "in place of the alb," it must always be worn with the amictus (as in any other function in which our own use a pluvial), not only to cover and conceal the head, but especially so that the upper part of the hood does not extend beyond the

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summit of the pluvial, which would be quite improper. What is to be said about the author's opinion?

Question X. Can a deacon assist at the customary Mass and procession on the Feria of the Fifth Week of Easter, wearing only the alb and stole, without the Subdeacon also being similarly attired, and without both of them wearing the stole for the entire Mass?

Question XI. Can the Paschal candle be lit in our churches during the Conventual Mass on non-festive days?

Question XII. Is it permissible for a priest to carry out the exposition and reposition of the Blessed Sacrament, or to bless the people with the ostensorium, or to carry the Blessed Sacrament in processions of the Most Holy Body of Christ, wearing only the cotta and stole, or only the alba and stole, with a sash and stole? Or rather, is he bound to wear the pluvial in all ceremonies in which other priests, not Capuchins, are required to wear the pluvial?

Question XIII. Can the ciboria or tabernacles, in which the Blessed Sacrament is reserved, be made externally of bare wood, painted in a crude color, or rather, should they be gilded, or painted in a more precious manner, than the other parts of the altar?

Question XIV. Is it permissible for reliquary boxes for sacred relics to be made in the form of an ostensorium, from simple and unadorned wood?

Question XV. Can certain minor blessings from the Roman Ritual be lawfully performed privately, wearing only the stole without the superpellice?

Question XVI. Are the Capuchins bound to observe the Decrees, especially those of December 18, 1877, and July 28, 1881, concerning the material of the vestments? And, if so, is it permissible to use vestments made of cotton, linen, or wool, which have been lawfully manufactured, after the prohibition of these materials?

[*Latin ed. p. 689*]

FROM THE SACRED RITUALS, Question 17. Can the Capuchin Order freely and in the same church perform the sacred functions, now according to the prescriptions of the ordinary Missal of Rome, etc., and now using the Memorial of Rituals published by Benedict XIII for small churches? This question, concerning which one of the Masters of the Apostolic Ceremonies presented his opinion in writing, was explained by the Most Eminent and Reverend Cardinal Raphael Monaco of Valletta at the meetings of the Ordinary Congregation of Sacred Rituals held in Vatican on the following date, and after careful consideration, the Most Eminent and Reverend Fathers presiding over the Sacred Rituals responded as follows: To I. Negatively. To II. Affirmatively, given the opportunity. To III. Negatively; however, it may be permitted in Masses of greater customary solemnity. To IV. The rubrics of the Missal must be observed. To V. It can be retained. To VI.

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Negatively. To VII. Affirmatively. To VIII. Affirmatively, if there is a cope; and after the complete aspergillum, he should turn to the Epistle side, and there take the maniple and the chalice for celebrating Mass. To IX. It must be maintained. To X. Negatively; and if there is a lack of clergy, the sacred function can be performed according to the Memorial of Rituals, ordered to be published by Pope Benedict XIII. To XI. Negatively, unless otherwise dictated by custom. To XII. If it concerns the exposition and reposition of the Most Holy Sacrament, it is sufficient for the priest to be vested in the cotta and stole; never with the alba, but only with the stole and cingulum. In processions and benedictions with the Most Holy Sacrament in the ostensorium, it is absolutely required that the celebrant wear the cope and the humeral veil, as prescribed by the Decrees of May 17, 1857, and June 22, 1874. To XIII. The Capuchin Fathers can retain the wooden tabernacle, elaborately crafted, by concession of the Sacred Congregation of Bishops and Regulars of July 13, 1659. To XIV. Affirmatively. To XV. The Ritual must be observed. To XVI. Affirmatively: however, permission should be requested to use such vestments, which already exist, until they are consumed. Acts, Volume XXIV, page CCLXXXVII, 44.

[*Latin ed. p. 690*]

690 FROM THE SACRED CONGREGATION OF RITES, Decree XVII. If the Church has a sufficient number of clergy, let them perform the functions according to the Roman Missal; if they have only three or four clerics, let them use the Memorial of Rites of Benedict XIII. And thus it was decreed, declared, and ordered to be observed on December 7, 1888. By Cardinal BIANCHI, Prefect of the Sacred Congregation; by Lawrence SALVATI, Secretary of the Sacred Congregation; by LUCIONENSIS. Doubts regarding the validity of the consecration of the Oratory, and regarding the titular feast of the same Oratory. In the year of Our Lord 1835, the main Oratory of the Major Seminary of Luçon, not at all separated from this building and constructed under the title of Saint Charles Borromeo, was dedicated to divine worship, with a single portable altar placed in a cavity in the middle of a wooden table; this table is placed upon a stone base, ornamented with marble, with which it is not at all joined. This single altar has served daily for the divine Sacrifice of the Mass until the present day. From the day of the dedication of the Oratory, it has been customary for the students to solemnly chant the liturgical offices in it on Sundays and feast days of each year. In the year of Our Lord 1837, the aforementioned building of the Oratory was consecrated without any consecration of an altar, either portable or fixed. From the day of this consecration until the introduction of the Roman Liturgy into the Diocese of Luçon, the anniversary feast of all consecrated churches existing within the territory of the Republic of France was celebrated in the Seminary Oratory, in the manner in which the anniversary of a consecrated church is celebrated, according to the Sacred

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Congregation of February 28, 1681, in Girgentina, that is, with a candle lit above each of the twelve gratings. But from the year in which the Roman Liturgy took effect in the Diocese until now, this manner of celebrating has ceased, because the consecration of the Oratory has been deemed invalid due to the lack of consecration of any altar, as we have explained above.

[*Latin ed. p. 691*]

FROM SACRED RITUALS 691: Nevertheless, from the day of the blessing of the Oratory until the year 1884, the titular Office was celebrated according to the double rite of the first class, with the Octave, by the rector of the Seminary, professors, and students in the higher Orders. However, in the aforementioned year, this manner of celebration with the Octave ceased, because its legitimacy "came into question." This doubt arose not only because the Oratory's entrance is not indiscriminately open to all the faithful, that is, to all, and therefore, according to some, it must be considered among those Oratories, of whose titulars no one is permitted to recite the Office according to the double rite of the first class with the Octave; but also because the consecration of the Oratory appeared to be invalid, as stated above. Having explained these matters, the Most Reverend Bishop of Lucionen humbly requested a solution to the following doubts from the same Sacred Congregation: Doubt I: Whether the consecration of the aforementioned Oratory was valid? Doubt II: Whether the titular feast of the same Oratory should be celebrated according to the double rite of the first class with the Octave? And the aforementioned Sacred Congregation, having carefully considered the report of the Secretary and the fervent opinion of another of the Masters of the Apostolic Ceremonies, approved of the following response to the questions posed: To I: Negatively. To II: Negatively, unless there is an Apostolic privilege. And thus it responded on June 28, 1890. QUEBEC, MARIANOPOLIS, AND OTTAWA. Doubts regarding particular calendars. The Most Reverend Lord Alexander Tascherau, Archbishop of Quebec, together with the Most Reverend Coadjutors of Marianopolis and Ottawa, humbly request from the Apostolic See: 1. That, according to the calendar recently approved for their three ecclesiastical Provinces, and according to the more recent Rubrics, they may be permitted to reform the particular calendars of the Churches and public Oratories existing within the boundaries of their respective Archdioceses. 2. That the proper feasts of the Churches and public Oratories, with the exception of the titular feast, may be assigned to the same days as those inscribed in the respective Diocesan Calendar, preserving the right to the complete celebration of the Octave.

[*Latin ed. p. 692*]

692 FROM THE SACRED CONGREGATION OF RITES: Furthermore, the Sacred Congregation of Rites, after receiving the following report from

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the Secretary and a fervent request from another of the Masters of the Ceremonies of the Apostolic See, having considered the matters proposed, decided to respond as follows: To I. Affirmative; to II. It is not advisable. And thus it responded on May 2, 1892.

† CARDINAL ALOISI-MASELLA, Prefect.

VINCENTIUS NUSSI, Secretary.

URGEL.

Doubts concerning the Subdeacon in a Pontifical Mass.

By order of the Most Reverend Bishop of Urgel, the present Master of Ceremonies in the Cathedral Church of Urgel humbly submitted the following doubts to the Sacred Congregation of Rites for a suitable resolution:

Doubt I. Whether the Subdeacon in a Pontifical Mass ought to ascend to the right of the Deacon in the Epistle side, then to recite the Agnus Dei together with the Pontiff, and then to pour water while the Pontiff purifies himself after Communion (as Martinucci states), or to offer the ampullae to the Deacon, as others say, following Baldeschi? And, negatively:

Doubt II. Whether he is at least obliged to ascend to the altar at the Sanctus, where such a custom prevails?

And the aforementioned Sacred Congregation, after mature deliberation, having considered the proposed doubts, decided to respond as follows:

To I. Negatively in all respects, and the Ceremonial of Bishops, Book II, chapter 8, paragraphs 75 and 76, and the Rubric of the Roman Missal, on the Rite of celebrating Mass, title X, paragraph 8, are to be observed.

To II. Negatively, and the Ceremonial of Bishops, Book II, chapter 8, paragraph 67, is to be observed.

And thus it responded on May 2, 1892.

† CARDINAL ALOISI-MASELLA, Prefect of the Sacred Congregation.

VINCENTIUS NUSSI, Secretary of the Sacred Congregation.

[*Latin ed. p. 693*]

693 FROM THE SACRED CONGREGATION OF RITES. A Doubt Regarding the Consecration of the Altar. The Most Reverend Michael Rosset, Bishop of Maurianen, humbly submitted the following doubt to the Sacred Congregation of Rites for a suitable declaration: According to the Roman Pontifical, where the consecration of both fixed and portable altars is discussed, five crosses on the upper part of the stone are to be anointed with sacred oil. If the cross in the middle of the stone is absent, and therefore the anointing of that cross is omitted in the consecration of the altar, is the consecration valid? And the same Sacred Congregation, after careful deliberation, and with the unanimous vote of another from the Masters of the Apostolic Ceremonies, decided that the aforementioned doubt should

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be answered as follows: The consecration is valid; but the anointing in the middle of the table must never be omitted, even if nothing is sculpted there. And thus it declared and responded on May 2, 1892.

% CAL Cardinal Aloisi-Masella, Prefect of the Sacred Congregation of Rites. Vincent Nussi, Secretary.

[*Latin ed. p. 694*]

694 APPENDIX IV. EXHIBENS ACTA SEDIS APOST.; QUAE AUT IAMDIU EXARATA SUNT AUT QUAE TEMPESTIVO LATUERUNT 'EPHEMERIDEM MODERATOREM.

Sacra Congregatio Concilii, 9 Februarii, 1669, Vicarius Apostolicus Tunquini. De amputatone alicuius partis corporis.

1. Utrum missionarius ad conservandam vitam alicuius patientis posset aliquam corporis partem incidere.

2. Cum ad praeservandum brachium teneretur digitum amputare, an incurrerit irregularitatem.

R. Ad 1. Possit devenire ad incisionem in casu necessitatis. Ad 2. Non incurrisse.

Sacra Congregatio Concilii, 8 Augusti, 1671. — Dubia quoad administrationem pecuniarum.

Dubia ex Sacra Congregazione de Propaganda Fide transmissa fuere infrascriptis verbis concepta: « Missionarii Cappuccini in Piemonte, per poter con maggior quiete delle proprie coscienze esercitare il ministero impostogli, umilmente supplicano l'Eminenze Vostre del loro oracolo circa i dubbii seguenti: »

1. Se, supposto che le Missioni de' Cappuccini ritrovandosi in Valli infette di eresia, o in luoghi molto poveri e miserabili, sia necessario ai missionari mantenérsi per mezzo di pecunie, quali spendonsi per mano di persone rustiche, incapaci, e per l'estrema povertà poco fidate, sia lecito al missionario intervenire talora con lo spenditore nella com-

Missionarii Cappuccini Pedemontis, ut munere sibi imposito fungi bona valeant tranquillitate conscientiae, dubiorum insequentium solutionem expetunt: 1. Quatenus Cappuccinorum missiones in Vallibus sint haeresi infectis, aut in locis pauperibus, in quibus oporteat missionarios vivere propria pecunia, quae impenditur per personas rusticas, ineptas, parumque fidas ob egestatem, qua premuntur, an liceat interdum missionarium interesse emptiont rerum familiae utilium, propriam

[*Latin ed. p. 695*]

695 APPENDIX IV. Concerning the necessary things for the administration of the House, it is necessary to state one's opinion, to determine what must be spent, and to order that it be spent and executed.

2. If the missionary lacks the necessary alms, it is permissible for him to

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go outside his own mission district, without discrimination, to seek other help, obtaining provisions, grain, wine, and other necessities for the sustenance of himself and his companion, so that he may be able to assist the poor Catholics, or converted Catholics, through Masses, or by other means of mendicity.

3. If, of the aforementioned alms, obtained through industry, it is permissible for the missionary, without further declaration, to use them to pay for medicines, surgeons, laborers, and to clothe the poor, without neglecting their extreme needs, even in such pious works, since this is most effective in assisting these, especially the converted, and in providing them with aid in their necessities; if these alms are applied to such pious works, a most edifying example will be presented to heretics. The benefactors may remit debts owed to the community, or to particular persons, for the needs of the Mission in general, or for the needs of the Mission in particular.

4. When it is necessary for the Mission, in general, or for particular persons, to receive wheat, it is permissible for the missionary to receive such wheat in kind, or in another kind, or in money, or in other things, even if it is less convenient for the debtors; and conversely, if such debts are remitted in money, it is permissible for the missionary to receive the same in kind, if it is more convenient for him.

[*Latin ed. p. 696*]

696 APPENDIX: Whether it is permissible to collect funds in that form or in goods, whichever proves more convenient for the Mission and the debtors.

5. Whether, given the scarcity of resources in the area, it is permissible for the missionary to occasionally purchase foodstuffs in order to perform acts of charity for both religious and secular visitors, and also to send gifts from time to time to nearby monasteries or convents, from which they receive extraordinary assistance and benefits, a small item appropriate to the condition of the region, and also to other secular individuals who contribute their services gratuitously to the benefit and interests of the Mission, and to poor Catholics.

6. Whether it is permissible for the missionary to purchase books, images, prayer beads (corone), and similar devotional objects on behalf of the Sacred Congregation in order to distribute them to those who frequently attend Christian instruction in the schools.

7. If it should happen that the person who spends the money on behalf of the Holy Congregation cannot, for some legitimate reason, keep this money safely in his own home, whether he may temporarily keep it and secure it in some box or chest belonging to the Mission, provided that he himself retains the key; and whether it is permissible for the missionary to examine the accounts of the expenses made by him; and if no such trustworthy

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person is found, either to safeguard or to spend the alms, whether it is permissible for the missionary to retain the money.

[*Latin ed. p. 697*]

APPENDIX IV. They are to be kept under lock and key as mentioned above; and, if some creditor is to be paid, if it is permissible for the missionary to be present at such a payment, without, however, handling the money, but presenting it to him wrapped in paper, or in a cloth, or any other thing, so that he may take the due payment himself.

From the same Sacred Congregation, along with these doubts, was transmitted the following doctrine and the responses of the Procurator General of the Capuchins: "As is my custom with my esteemed Lords, I will sincerely express my opinion regarding the doubts presented. I believe that Religious who are sent from the cloister of their Order to various parts of the world for the purpose of spreading the faith and religion are not entirely exempt from the observance of their own Rule, but rather remain always bound by such observance, just as those who are assigned from the same Orders to a parish, or even to the episcopacy, are, as is the opinion of all. Nevertheless, I believe that such missionaries, with regard to the vow of poverty, are, by the very fact, considered as administrators of goods, the administration of which is necessary for the fulfillment of the missionary office, either absolutely, or conditionally, just as those who are assigned to a parish, or to the episcopacy, are considered, according to the understanding of all, as administrators of ecclesiastical goods or those pertaining to the episcopacy. With these premises, I could certainly satisfy all the doubts with a single word, by saying that missionaries who are newly sent to places where missions have long been established will do well if they conform to the way of life of the older missionaries, from whom they can easily understand all the ways of living; in this way, they themselves will be safe in conscience, both with regard to themselves and with regard to others, and all opportunity for disturbance will be eliminated, which often arises among missionaries, because they claim to be introducing a new reform. If, however, the missionaries themselves have been residing in the mission for a long time, it will also be best if they do not deviate in any way from the former, and ancient way of life; I say, this could be answered with a single response, and it might be helpful to satisfy the missionary in this way, so that both he and others may observe the same way of life in all respects, which those before them, or they themselves, have followed from the beginning of the mission for several years. However, coming to the particular doubts: "To 1. I answer that it is permissible for the missionary, in the case mentioned in the doubt..."

[*Latin ed. p. 698*]

698 APPENDIX IV. concerning this matter, to intervene with the very

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person who is obligated to expend resources for sustenance and domestic management, and to simply propose or explain the judgment, because these are not acts of proper dominion, but rather simple acts of dispensation, and it is clear from the premises that these are not prohibited to missionaries. » To 2. I likewise respond that it is permissible for a missionary to provide for himself, and for his companion, necessities not only for themselves, but also for Catholics, for whose salvation, even in a corporal sense, it is best to consult, insofar as it can contribute to spiritual salvation, or the propagation of the faith and religion; provided, however, that, in order to avoid all disturbance, they do not extend their activities beyond the district of their Mission without the permission of another missionary, or even of the superiors of their Religious Order within that district, in which they intend to procure such things. » To Z. Similarly, I respond that it is permissible to use alms without any other declaration from the giver, because the givers, by the very fact that they do not specify in what the alms given by them must be spent, are considered to give them with full freedom, so that they may be spent in those things in which the missionaries judge that they ought to be expended. » To 4. Similarly, I respond that it is permissible, provided that the missionaries do not exercise any act of dominion concerning these matters. » To 5. I also answer affirmatively, because all of these things are considered to be done as dispensers of alms, and for the benefit or detriment of the Mission. » To 6. Likewise, because they purchase such things in the name of the Congregation, no dominion is exercised, but rather a simple act of dispensation, and in accordance with the intention of the Holy Congregation. » To 7. I respond that missionaries should, as far as possible, completely abstain from receiving money themselves, or even from retaining or keeping it within their own homes or lodgings, or from receiving money, or contracting debts in any way through themselves; however, if a true case arises, as is supposed in the doubt, I believe that it is not illicit for a missionary to have money reserved within his own home; provided, however, that this is done with the intervention of some person, and that it is withdrawn as often as necessary to procure necessities outside, in a case in which they could in no way find a person to whom such things could be entrusted, which I believe is very unlikely to happen; because, however, this is a matter of fact rather than of law, I believe that everything proposed in this final doubt should be left to the prudent judgment of the missionary, which it would be best for his companions to at least consult with, or even obtain the consent of; and furthermore, he may consult with the Prefect of Missions in due time, whose advice, if it can be obtained, would be far safer and more prudent.

[*Latin ed. p. 699*]

APPENDIX IV. 699. In order that this opinion of the Sacred Congregation may be presented to the Sacred Congregation for the Propagation

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of the Faith, the Most Reverend Fathers deigned to respond to the questions proposed above. August 8, 1671. The Sacred Congregation of Eminent Cardinals of the Council of Trent, interpreting in all things according to the aforementioned responses, judged that it should be so, and responded accordingly. Sacred Congregation of the Holy Office, November 20, 1668. Concerning the dispensation to be granted to the sons of heretics. Whether students in the Pontifical Colleges who are either converted from heresy or are the sons of heretics, and are therefore irregular (which is evident), have been and are being promoted to the sacred Orders, whether they have been and are being promoted lawfully and canonically. And whether they require and do require a dispensation from the aforementioned irregularity. Response: The aforementioned students have required and will require a dispensation with regard to the aforementioned irregularity. Sacred Congregation of the Holy Office, March 18, 1782, Vicariate Apostolic of Constantinople. Concerning the business to be conducted in the society. Whether priests ordained for the title of mission can contribute funds to the society for business, and thus receive a share of the profit arising from the business, whether it be a determined profit or an eventual one? The reason for doubting is because, lacking property and assets, they are not sufficiently provided for their sustenance, or for cases of infirmity, pestilence, fire, old age, in which alms from Masses can provide them with little or nothing. Response: The Most Holy Fathers ordered that the matter be answered through an Instruction. INSTRUCTION: The entire question hinges on this: whether it is permissible for priests ordained for the title of mission, who lack property and assets, and who can obtain little or nothing for their sustenance from the alms of Masses, that they may, through some lawful and honest business, provide for their sustenance. However, it must be distinguished whether these priests are presently in need, and if assistance is not provided to them, they will be forced to beg for their sustenance, which would be a disgrace to their character; or rather, whether they are providing for future cases of infirmity, old age, and even pestilence, fire, and earthquakes, to which this city is frequently subject, and are seeking to obtain some profit from business.

[*Latin ed. p. 700*]

700 APPENDIX IV. Those who wish to compare their situations, so that, with this caution, they may avoid future poverty. Regarding priests who are presently suffering from a lack of resources, the Decree of the Sacred Congregation for the Propagation of the Faith, dated November 23, 1665, is readily available; and regarding others who wish to provide for their future, but probable, needs, it is also advisable to consult the Encyclical Letter of the Most Holy Pope Clement XII, dated September 17, 1759, which begins: "Cum primum," and in which, especially in §§ "Si autem Ecclesiasticorum quispiam etc." and "Deinde pro eo etc.," the necessary faculties are most

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solemnly decreed (1). From these pronouncements of the Apostolic See, if the Apostolic Vicar of Constantinople follows the rules and regulations, and even the indulgence therein expressed, with exactness and diligence, it will be easy for him to resolve all doubts, and to assist the needy priests, either immediately or in the future. For if present poverty is pressing, he can, according to the aforementioned Decree of 1665, permit some negotiation to be carried out by the priests, provided that it is done under the conditions added in that same Decree; but if it is only necessary to provide for future needs, he may use the faculty granted by Pope Clement XIII to bishops outside of Italy, and grant dispensations to the priests, so that they may seek assistance through their own industry to avoid poverty, but always under the conditions and rules prescribed by the same Pontiff in that letter, and thus, etc. (1). For the benefit of the reader, what is relevant to the matter is included. But if any member of the clergy, in order to excuse himself for engaging in secular affairs, claims a need for assistance, not his own (since every cleric ought to have a canonical title of ordination, or at least a suitable and sufficient patrimony to support himself, and if he lacks these, he ought to provide for his own needs through more honorable means, consistent with his profession), but that of parents, siblings, or other persons to whom he is obligated to provide assistance by natural duty; first, we wish and decree that such an excuse should not be accepted by the ecclesiastical superior, and that the cleric should not be excused from being punished according to the prescription of Canon Law for the offense, unless he can demonstrate that he has previously presented these needs to the Apostolic See, if he is located within Italy and adjacent regions; or, if he is in more remote regions, at least to the local Ordinary, and that, with due consideration of these circumstances, he has obtained the appropriate dispensation and faculty to assist these persons through their own industry, either from the Apostolic See or, respectively, from the Ordinary. Furthermore, we decree that these faculties, even those obtained as mentioned above, should always be considered subject to revocation, so that they are held as invalid and revoked as soon as the alleged needs of the relatives cease, or when another legitimate reason arises for properly providing for them. We desire that the local Ordinaries should be burdened with the responsibility of overseeing and observing all of the above, and we declare that they are indeed burdened with this responsibility.

[*Latin ed. p. 701*]

704; APPENDIX IV. Sacred Congregation of the Holy Office, August 2, 1649. — Concerning the celebration of Mass by itinerant priests. The Most Holy Fathers ordered that Superiors of Religious Orders be notified, so that they may instruct the Superiors of monasteries and convents under their authority not to admit, for the celebration of Mass in their churches, other priests, whether of their own Order or of another, who are itinerant

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or pilgrims, unless their letters of obedience or assignment from their Superiors, and testimonials of their promotion to the priesthood, have been carefully examined; and in the case of secular priests, unless letters and testimonials have been seen, signed by the Vicarious General, or the local Bishop. From the Instructions of the Sacred Congregation for the Propagation of the Faith, October 16, 1883, concerning boys being educated in the seminary. 1. According to the ordinance of the Council of Trent (Session 24, chapter 18 on Reform), a certain number of boys must be maintained and religiously educated in the Seminary. Therefore, that the Reverend Fathers may be more certain of the good disposition of the boys whom they choose for this number, they should first observe the ordinances of the Synodus Sutchuensis (chapter VIII, number 1) (1). Indeed, it would be best if, when anyone requests to be admitted, or if missionaries consider him suitable, they should first have him serve at the altar for at least one or two years, or even, if possible, retain him with them, in order to test his suitability, his character, his docility: and when they judge him to be suitable, they should present him to the Apostolic Vicar, so that he may be introduced into the Seminary, or the preparatory school, if one exists. This judgment will be determined by the Apostolic Vicar himself. The boys should be at least twelve years old, or at the very least ten, and generally speaking, not more than fourteen years old, and must be instructed in all the qualities required by the Council. They should remain in the Seminary for two years, as a period of probation; then, if they are found to be suitable, they should be counted among the students. It is of the greatest importance, given the nature of the Chinese people, that the adolescent should, as soon as possible, be under the care of missionaries and of the Church itself, that inquiries should be diligently made into his character, and that he should not be admitted unless there is a true hope that he will perpetually and holily serve in ecclesiastical ministries. (1) Syn. Sutch. ch. VIII, n. 1: "Whoever is a young man who requests to be admitted to the Seminary," the missionary should neither immediately refuse nor hesitate, "but should advise him, with prayers and constant effort, and with prudent counsel, to inquire and to prepare himself; meanwhile, the missionary himself should seriously investigate, consider, and test, as much as he can, whether he possesses the aforementioned qualities (that is), innocence of morals, or probity, industriousness, good habits, docility, aptitude of mind, and rectitude of intention."

[*Latin ed. p. 702*]

702 APPENDIX II. 2. The Holy Congregation also considers the following to be the best course of action, which has been adopted by some Apostolic Vicariates: to establish a special school in which boys of this kind, separated from others, are prepared for the Seminary; or, better still, as has already been done in several missions, to establish a preparatory college

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(petit séminaire) separate from the Seminary itself. 3. Since many Vicariates in China still only exhibit a certain form, and are, as it were, only the beginning of Seminaries, and the necessary means for establishing them are not yet available, nor will they be found in the near future; so that they may not be deprived of the benefits of this institution, and indeed, may enjoy its fruits immediately, the Most Holy Fathers have recommended to the superiors of those missions that they strive to establish central or provincial Seminaries, one or more in each region, as circumstances permit, in which it will be easier to obtain both a sufficient number of teachers and supervisors, and, with funds provided, all the other necessary resources. Indeed, the Fathers of Trent already clearly indicated this in the aforementioned decree, with these words: "If, in any province, the poverty is so great that a college cannot be erected, the provincial synod, or the metropolitan synod with two of the older suffragan bishops, shall take care to erect one or more colleges, as it shall judge to be appropriate, from the revenues of two or more churches, in which a college cannot be conveniently established, where the boys of those churches shall be educated." 4. Furthermore, the Holy Congregation strictly directs that in the major Seminary (Grand Séminaire), where it is established, no laymen whatsoever be admitted; and that those who are found to lack a true ecclesiastical vocation be immediately excluded from it, so that it can truly be said of this college that it is the perpetual seminary of God's ministers. The prescription of the Fathers of Trent must also be observed with no less rigor, namely, that the unruly, incorrigible, and those who sow the seeds of bad habits be severely punished (by the Vicars Apostolic), and, if necessary, expelled, and that all obstacles be removed that may be deemed to pertain to the preservation and growth of this pious and holy institution. 5. In order that this may be effectively achieved, it is absolutely necessary to provide appropriately for the care and administration of the Seminaries, so that the priests assigned to them are relieved of all other duties and responsibilities; so that, not being distracted by various concerns, they may devote the most diligent effort to this matter of such great importance. If this were not the case, the tender nature of the young men would be...

[*Latin ed. p. 703*]

APPENDIX IV. 703. They could not so contrive the matter of the vocation to the priesthood, that, as the Council itself declares, "the intention of the Church is most firm," which is evident to all who read it. Furthermore, it is scarcely believable that the Bishops would take care to assign a spiritual director to the Seminary, whose ministry would add so much to the students' desire to draw from piety and the teachings of the saints. 6. The Sacred Congregation praises the plan of the Fathers, expressed in several Synods, concerning the restoration of studies; a matter on which the Decree of the Council of Trent was so concerned. However, having carefully

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considered the reports concerning the state of studies in the Seminaries in China in recent times, it has judged it necessary not only to remind the Reverend Vicars of the tenor of the aforementioned Decree, but also to indicate certain specific points that it believes are pertinent to the proper restoration of studies in China. Therefore, in the first place, it is to be noted that it would be best if, in each region where the prelates have convened a Synod, certain learned and experienced men are chosen by the prelates themselves, who, assembled together, would discuss the method of introducing studies in the Seminaries, and would present to the Bishops, in the subsequent synodal meetings, a report of the opinions they have reached. It will also be necessary to speak specifically about the books to be used in the schools of the Seminaries, and to discuss whether it is advisable to present to the students, indiscriminately, the authors of the Golden Age in the Latin language, and also whether and how the classical Chinese authors should be presented to the young men. In particular, the question of the authors to be used in philosophy and theology will be raised. In this matter, the Sacred Congregation has noted with pleasure that several of the Fathers have shown themselves concerned that the philosophy of St. Thomas should be introduced in these schools. Therefore, it praises this proposal, and it believes it would be best if the aforementioned men would discuss how to put this into practice, indicating the authors who are suitable for this purpose, considering the circumstances of the place and the young men. Indeed, as is well known, this will be very pleasing to Our Most Holy Lord, who has shown such concern for the restoration of the philosophy of St. Thomas, as is evident from His Encyclicals. Furthermore, it must be noted how, in the transmission of philosophical and, especially, theological doctrines, errors and prejudices of the nation must be kept in mind and refuted. It would not be inappropriate if a work were expressly prepared against these very prejudices, so that the young men destined for the priesthood may become true champions against the errors of their nation. Finally, it is most important that, in the instruction on the Church, the students should be taught about the power and reason of the primacy of the Roman Pontiff.

[*Latin ed. p. 704*]

704 APPENDIX IV. Let the facts concerning religious life, and its privileges and gifts, be diligently set forth, in accordance with the decrees of the Vatican Council, so that young men may be imbued with deep love and reverence for the Roman Church. 8. As for the revenues destined for establishing seminaries and supporting young men, since those things which the decree of the Fathers of Trent establishes cannot be applied in mission territories, the Holy Congregation earnestly urges all Very Reverend Fathers to allocate the largest possible portion of alms intended for mission work to the support of seminaries, after necessary expenses are met, imitat-

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ing the concern of the Council of Trent, which did not hesitate to provide, with its authority, for the establishment of revenues for these colleges. 9. When the students have reached the age necessary for receiving the sacred orders, let them not be ordained immediately, nor with undue haste; but let the following be kept in mind, as the Synodus Sutchuensis (c. VIII.) states: "Let no one be admitted to the dignity of the priesthood who has not been proven worthy for a long time"; and again: "Let no one be admitted to the sacred orders unless he has been commended by heavenly wisdom, good morals, the long observance of justice and chastity, and the acquisition of suitable knowledge, after a long period of probation in the seminary" (ibid.). And, if it should be necessary, let them not hesitate to postpone the sacred ordination beyond the common term of years, namely, 24 completed years, according to their prudence. Holy Congregation for the Propagation of the Faith — C. G. June 13, 1625. — Concerning the absolution from heresy. Can Regular clergy, by virtue of their privileges, even through means of communication available to them, absolve from heresy, as some Religious have, in fact, exercised the power of these privileges? R. Regular clergy cannot, in any way, by virtue of their privileges, even through means of communication available to them, absolve from heresy; and therefore, those who usurp this power, and actually use it, are acting wrongly.

[*Latin ed. p. 705*]

APPENDIX IV. 705 Sacred Congregation of Propaganda Fide — General Congregation, July 28, 1626. Concerning the celebration of Mass by foreign priests. It was reported that a declaration of the Sacred Council of Trent concerning doubts proposed by the Bishop of Zacynthus had been presented, which was recorded at the end of the preceding Congregation (1). However, with the approval of the Most Holy Lord, the Fathers declared that the aforementioned declaration should be understood in relation to religious priests who are foreigners and who have churches of their own Order in that island. Furthermore, concerning religious priests who do not have churches of their own religion, it is to be granted to the aforementioned Bishop the faculty of prohibiting them from celebrating the sacred rites there without his permission. Decree of the Sacred Congregation of Propaganda Fide — General Congregation, September 20, 1638. Concerning missionaries and the use of money. Referring to the urgent request of missionaries from the Religious Orders of Saint Francis and the Capuchins, that it be declared that, by the very fact that they have become missionaries, the use of money is granted to them, both during their journey and in the places of their missions, when they cannot have the assistance of a faithful syndic; and also the rescript of His Holiness Honorius III to the Franciscans in the kingdom of Morocco who are missionaries; the Sacred Congregation decided that, if it pleases the Most Holy [Father], a dispensation should be

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granted in the case of the absence of a faithful syndic, with the Prefects of the Missions, regarding the use of money, according to the request made, with the conditions of the aforementioned rescript added, namely, when necessity urges and utility invites, and with fraud and deceit absent, so that their sincerity may not be doubted (1). In the Acts of the General Congregation (of Propaganda Fide) of July 14, 1626, the following is recorded: "The Sacred Congregation decided to refer the request of the Bishop of Zacynthus to the Illustrious Fathers, Interpreters of the Holy Council of Trent, so that they may discuss and define the following doubt: Whether the local Ordinaries, by virtue of the Council of Trent concerning matters to be observed and avoided in the celebration of Mass, can, as delegates of the Apostolic See, prohibit, under penalties and censures, religious priests who are foreigners from celebrating Mass in the churches of their own Orders within the dioceses of those same Ordinaries, without their permission; and if, perhaps, this doubt is defined negatively, the Sacred Congregation considered that, for reasons alleged by the aforementioned Bishop, it could grant to those same Illustrious Fathers, with the benevolent approval of the Most Holy [Father], to that same Bishop the aforementioned faculty." The response of the Sacred Congregation to the Council is recorded in the same Acts as follows: "To the doubts proposed by the Bishop of Zacynthus, the Sacred Congregation of the Council responded as follows: On July 27, the Sacred Congregation of the Illustrious Cardinals, Interpreters of the Council of Trent, responded: 1. Local Ordinaries, by the disposition of the Holy Council of Trent, cannot prohibit religious priests who are foreigners from celebrating Mass in the churches of their own Orders without their permission. 2. It is not to be granted to the Bishop of Zacynthus the faculty of making such a prohibition, unless there are frequent cases with incorrigible negligence on the part of the Superiors of the Religious Orders." Acts, Vol. XXIV, page 288.

[*Latin ed. p. 706*]

706 APPENDIX IV. [He] leads [them]; and [He] grants to the same Prefects the faculty of dispensing, in the same manner and with the same conditions, with the members of the Missions, provided that it is deemed fitting. Notwithstanding, etc. — On the same day, the Most Holy Lord approved the decree of the Holy Congregation. From a letter of the Holy Congregation for the Propagation of the Faith, April 8, 1862, to the Apostolic Vicar of Lahassae. Missionary merchants. The Most Reverend Fathers (of the Sacred Congregation of the Holy Office) considering the necessity in which the missionaries find themselves, namely, to act as merchants in order to enter and remain in the kingdom of Thibeti, deemed it opportune to transmit to you a copy of the decrees which, in similar cases, have been issued by the same Holy Congregation; so that you may use them, and, according to the prudence given to you by the Lord, you may apply

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them in similar cases; with the reservation of recourse, which you always have to the Holy See, in the event that you should doubt about any case, or fail to find a way to apply the aforementioned decrees. Furthermore, you ought to know that the instruction transmitted to you by order of the Most Reverend Fathers, which caused you anxiety, concerns the exercise of commerce properly so-called, that is to say, a lucrative commerce, which is forbidden to ecclesiastical persons. Letter, encyclical, of the Holy Congregation for the Propagation of the Faith, March 29, 1873. Concerning clerics who exercise commerce in the Orient. When a doubt was presented to the Supreme Congregation of the Holy Inquisition, whether, after the Apostolic Constitution promulgated by the Most Holy Lord Pope Pius IX, of divine memory, on October 14, 1869, the censures of perpetual sentence still remain in force against ecclesiastical persons and missionaries who engage in commerce in the Orient, as prescribed in the Constitutions of Urban VIII, promulgated on February 22, 1633, and of Clement IX, *Sollicitudo*, promulgated on June 17, 1669, the Most Reverend Inquisitors General, in a Congregation held on February 4, 1872, after considering that the aforementioned censures of the Constitution could give rise to questions, deemed it fitting to request the same Most Holy Lord to deign to declare that the Constitutions of the Supreme Pontiffs Urban VIII and Clement IX, previously mentioned, are still in force, and that this declaration should be notified by this Holy Congregation through circular letters, as is done by the tenor of the present document, to all missionaries residing in the Orient and in the United States. Furthermore, His Holiness considered it fitting to agree with the same opinion in all respects.

[*Latin ed. p. 707*]

APPENDIX IV. 707 Sacred Congregation of the Holy Office, January 17, 1883. Concerning Chinese Missionaries with regard to commerce and penalties imposed. Whether the declaration of His Holiness of December 4, 1873, also includes Chinese missionaries? (1). Answer: Affirmative; and according to the following: The intention is: 1. That the words "reserved solely to the Pontiff" be replaced with the words of Clement IX, namely: — "No one can be absolved from this excommunication, unless he is in the article of death, except that, before such profit is restored." (Clement IX, in the Constitution *Sollicitudo pastoralis*, June 17, 1669, § 4). 2. That the same prohibition and penalty, according to the intention of the same Clement IX, should apply not only to European missionaries, but also to any ecclesiastical persons who, under the title of missionaries, or by any other title, have been sent, or who reside in those regions in any way. Sacred Congregation of the Holy Office, January 29, 1851. — Concerning the conversion of money into merchandise. The Vicar Apostolic of Kouytcheeu requests permission to arrange for the money sent by the Seminary of Paris for the sustenance and needs of the missionaries to be converted into merchandise,

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which can be sold within the region, so that the entire sum sent can be received without loss. The matter proceeds as follows: The Vicar Apostolic deposits the money sent to him with a merchant in his province. From time to time, he withdraws and spends a portion of that money as necessities require. Thus, at the end of the year, more or less money remains in the hands of the merchant, who uses that money to conduct his business and derives a profit from it, and is surprised that the Vicar Apostolic receives no share of the profit. The Vicar Apostolic requests that he be allowed to enter into a partnership with that merchant, so that he may share in the profits or losses, in proportion to the money deposited by the Vicar Apostolic with the aforementioned merchant. Answer: Regarding entering into a partnership, negatively; and the Vicar Apostolic of Kouytcheeu should consult Benedict XIV in his Apostolic Constitution *Servitutis et Synodi Dioeces*, Book 10, chapter 3, and the Decree of August 13, 1834, namely: "It is permissible for missionaries, etc., to consult for the benefit of their support and for the good of the mission itself, by accepting, in the form of exchange, merchandise purchased with sums owed to them, and by having the same delivered to them, and by obtaining the price of the sale of the same." (1) This declaration is found in this appendix, page 706.

[*Latin ed. p. 708*]

APPENDIX IV. From the Sacred Congregation of the Holy Office. November 23, 1874. Doubts regarding places where the confessions of nuns are heard. 1. Whether the places where the confessions of nuns are customarily heard should be considered as places designated for hearing confessions, or as true confessionals. 2. Whether the same should be said of places constructed in the form of those in which the confessions of nuns are customarily heard, in which the confessions of women residing in places commonly called conservatories, retreats, are heard. 3. To the extent that they are to be considered as true confessionals, whether such places should be considered only in relation to nuns and other women residing in the aforementioned places, or also in relation to other women from outside. Answer: To the three questions as they are presented: Affirmative. From the Sacred Congregation of the Holy Office. December 22, 1880. – Concerning the departure of nuns. By the Apostolic Constitution of the Holy See (of Pope Pius IX), nuns who leave the enclosure, except in cases and in the manner prescribed by Pope Pius V in the Constitution *Decori*, are subject to excommunication *latae sententiae*, reserved to the Roman Pontiff. But in this Diocese, as also in many others, it has been customarily permitted to them to leave for serious reasons, recognized and approved by the Bishop, according to the Council of Trent, without regard for the Constitution of Pius V. Therefore, it is asked whether this particular and ancient custom should be considered abrogated by the aforementioned new Constitution, or whether it can continue. Answer: Affirmative regarding the first part;

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Negative regarding the second: namely, that the Constitution of Pope Pius V *Decori* must be observed regarding the departure of nuns from the enclosure, notwithstanding the contrary custom. (1) (1) The Constitution to which reference is made (January 24, 1570) prohibits the Pope from allowing nuns "even for the sake of infirmity or of other monasteries, even those subject to them, or of the houses of parents or other relatives, or for any other occasion or pretext, unless for the cause of a great fire or of infirmity, leprosy, or epidemic, which infirmity, besides other superiors of Orders to whom the care of monasteries is entrusted, must also be known and expressly approved in writing by the Bishop or other Ordinary of the place, even if the aforementioned monasteries are found to be exempt from the jurisdiction of Bishops and Ordinaries, to go out of the aforementioned monasteries, but even in the aforementioned cases, except for that, it is not permissible to stay outside for any length of time; otherwise, those who go out, or who grant permission to go out in any way, as well as those who accompany them, and those who receive them, whether lay or secular, or ecclesiastical, relatives or not, are immediately subject to the bond of excommunication *maioris latae sententiae*, without any declaration, from which they cannot be absolved except by the Roman Pontiff, unless in the article of death.

[*Latin ed. p. 709*]

APPENDIX IV. 709 From the Decree of the Sacred Congregation concerning the status of Religious Orders, January 25, 1848, regarding the testimonies to be presented for admission to the religious life.

I. In any Order, Congregation, Society, Institute, Monastery, House, or in those places where solemn or simple vows are taken, and even concerning Orders, Congregations, Societies, Institutes, Monasteries, and Houses which, by a special privilege, are also closed within a certain jurisdiction, or by any other title are not included in the general decrees, unless a special, individual, and explicit mention is made of them, no one shall be admitted to the habit without testimonies from both the Ordinary of the place of origin, and also from the Ordinary of the place in which the candidate has resided for more than one year after completing his fifteenth year of age (1).

II. The Ordinaries, in the aforementioned testimonies, after diligently inquiring, even through secret information, about the qualities of the candidates, must report on their birth, age, morals, life, reputation, condition, education, knowledge; whether they have been accused of heresy, or have incurred any censure, irregularity, or other canonical impediment, whether they are burdened with debts, or are subject to giving an account of any administration. And the Ordinaries must know that their conscience will be burdened with the truth of what is presented, and that they should never refuse to grant such testimonial letters; however, in these, they must

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only testify to what they can affirm with a good conscience in the Lord, concerning each of the aforementioned points.

Sacred Congregation, Epistolary and Regulatory Documents, April 22, 1872. Questions regarding the confirmation of confessors of nuns.

The Bishop N. humbly explains to Your Eminence that, after having recently presented a detailed account to the Most Holy Congregation of Cardinals and Bishops, and after consultations with the superiors of Religious Orders, difficulties have arisen in his own diocese concerning the proper application of canon law, by virtue of which a confessor of Religious women must be changed every three years; and that he has obtained an Indult from the same Most Holy Congregation, dated February 6th of the last year, as follows: "By virtue of the special faculties granted by the Most Holy Father, the Sacred Congregation for Bishops and Regular Canons, having considered the report presented by Bishop N., benignly grants him the faculty to..." (1)

The same Sacred Congregation, on May 1, 1851, declared that testimonial letters given by the Ordinaries in private letters are sufficient.

[*Latin ed. p. 710*]

710 APPENDIX IV. "Concerning the duration, Confessors regarding whom confirmation is sought; thus, "however, if it pertains to a second three-year period, the consent of at least two out of three parts of the Sisters must be given, both capitularly and through secret votes; if, however, it pertains to further three-year periods, the consent of all the pious houses of the Sisters, as above, must be given, notwithstanding any objections whatsoever." – Rome, February 6, 1872.

Furthermore, the same Bishop N. is held back by various doubts concerning the application of the aforementioned Indult, and humbly requests a solution to them:

1. How is this phrase to be understood, "capitularly"? Does it pertain only to the Sisters who regularly attend the Chapter, and who possess the right to vote, whether passively or actively, or to all Sisters indiscriminately, including Novices, and those who are called Converts?

2. In the Diocese of N., as in other parts of Gaul, there are various houses of Sisters who are dedicated to external works of charity, namely, assisting the poor and the sick, or to the education of girls; these houses are not perfectly autonomous, but are held under the governance of the General Congregation. Direction emanates from the principal house (maison-mère), in which reside the General Superior and her Councilors, to which these particular houses are subject. Moreover, the Sisters do not always reside permanently in the same house, but frequently move from one house to another, as required by the needs of the Congregation. In these houses, there is never a Chapter properly so-called; if certain difficulties arise, or

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if changes, modifications, or institutions are needed, all of these matters are always referred to the General Superior and her Councilors for definition and determination. Furthermore, with regard to these particular houses, how is the phrase "capitularly" to be understood and applied, as mentioned in the aforementioned Indult?

3. In many parishes, especially rural ones, there are two or three, and sometimes only four, of the aforementioned Sisters serving in the education of girls. Moreover, these Sisters, commonly living outside the enclosure, do not have a private chapel, but attend the parish church, as do others, assisting at Masses and other services, receiving the Sacraments of Penance and the Eucharist; these Sisters also frequently move from one parish to another, according to the will of the General Superior. Furthermore, in these circumstances, is the legal provision concerning the three-year change of Confessors to be applied, especially since in these parishes there is only one priest, namely, the parish priest? And, if it is to be applied, how is the phrase "capitularly" to be understood again?

[*Latin ed. p. 711*]

APPENDIX IV. 711

4. Debentne illae voces, quae in omnibus piae domus Sororum occurrunt, intelligi de unanimitate absoluta, seu tantum morali?

R. Ad 1. Intelligenda sunt tantum Sorores quae ordinarie Capitulo intersunt.

Ad 2. Intelligendum est de iis Sororibus quae praefatas domos inhabitant, tum cum triennium Confessarii completur, et vocem habent in Capitulo.

Ad 3. Sorores de quibus agitur possunt peragere extra piam propriam domum Sacramentalem Confessionem penes quemcumque Confessarium ab Ordinario approbatum.

Ad 4. Affirmative ad primam partem, negative ad secundam.

Ex Litteris S. Congregationis, Epistola et Regulamentis, 20 Iulii 1875 — Dubia quoad confessarium Monalium.

Archiepiscopus d'Oregon proposuit sequentes dubia, notando, per claram intelligentiam primi, quod dictus Archiepiscopus citavit textum a Doctore S. Alfonso de'Liguori, in quo dicendum est quod confessarii Monialium, exacto triennio, declarantur suspensi, ad quod additur: et hoc valet etiam pro confessariis Conservatoriorum.

Archiepiscopus Oregonopolitanus dubia quae sequuntur proposuit, ad maiorem rei claritatem, textum excerptum a S. Doctore Alphonso de Liguori, in quo dum dicitur, confessores monialium, exacto triennio declarari suspensos, adiicitur — et hoc valet etiam pro confessariis

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conservatoriorum:

1. Nos sorores de Charité et aliae quae ad educationem iuventutis sunt consecratae, comprehendunturne sub nomine Conservatorum?

2. Si ita, potestne Episcopus auctoritatem conferre confessario ad recipiendas confessiones eorum ultra triennium, ratione deficientiae confessariorum idoneorum?

3. Prohibitio S. Congregationis fertne nullitatem absolutionis datae a confessario, per Episcopum approbato ad recipiendas confessiones ultra triennium?

3. Defenditne sententia S. Congregationis nullitatem absolutionis datae a confessario, cui Episcopus auctoritatem dedit ad recipiendas confessiones ultra triennium?

[*Latin ed. p. 712*]

712 APPENDIX. This Holy Congregation of Bishops and Regulars, for the resolution of the questions presented, after having heard the oracle of His Holiness, first declares that, in general, the prescription regarding the triennial change of confessors must apply equally to monasteries and convents, as well as to any other society of women living according to the common life, which have regular confessors, unless they are dispensed from this by special indulgences. Furthermore, it adds that the same Holy Congregation, in the year 1846, in response to a request similar to the present one, which had been put forward by the Bishop of Trident, namely, whether confessors should also be changed in each three-year period, even when, as is the case with the Sisters of Charity who serve in hospitals, these are often transferred from one place and one house to another, had already given an affirmative answer, but at the same time granted the Ordinary the faculty to confirm them once or even twice, always observing the customary conditions prescribed in such cases. Finally, His Holiness explicitly declared that the continuation of the same confessor in a community of women, as mentioned above, for more than three years without a dispensation from the Holy See, to which alone it belongs to grant such a dispensation, does not render the sacramental absolutions null, but only constitutes an illicit exercise of that sacred ministry.

[*Latin ed. p. 713*]

APPENDIX concerning the ministry. To remove the uncertainty that still remained in the mind of the Archbishop of Naila, it will be useful to point out that if the Sisters or Daughters of Charity of Saint Vincent de Paul in his diocese have the custom, or are obliged, to confess to the parish priest, either in his parish church or in another public church, this is not the case to which the prohibition given to confessors to proceed beyond the three-year period applies; and that this prohibition is applied only to ordinary confessors who go to hear confessions in monasteries, convents, and other

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places where women live in community.

Sacred Congregation of Bishops and Regular Canons, Decree and Regulations, July 16, 1884. – Concerning the authority of the Bishop over nuns.

1. Can the Bishop, by his own authority, permit women to be received into monasteries subject to enclosure, for example, as pensioners?

2. Likewise, can the Ordinary, by his own authority, transfer a nun from one monastery to another, even of the same Order, for a time or permanently, with a just reason?

Sacred Congregation of Indulgences, January 25, 1842.

Doubts regarding indulgences to be gained by members of sodalities.

Since the Archbishop of Cambray, when establishing sodalities of any title, has given to each sodality the same statutes to be observed, and without mentioning any pious work to be performed by the members, he asks the Sacred Congregation:

1. Whether Indulgences, granted by the Apostolic See under such circumstances, are valid, and whether the members can gain them, provided only that the conditions prescribed in the pontifical grants are fulfilled?

[*Latin ed. p. 714*]

7,14 APPENDIX IV. 2. Whether the aforementioned statutes must be observed under penalty of the nullity of Indulgences, so that the faithful are deprived of Indulgences because of their non-observance, whether complete or only partial? 3. Whether the reception of the faithful, or their enrollment in the Sodality, made by the respective parish priest of that church in which the Sodality is established, is sufficient to obtain the attached Indulgences, even though the statutes do not mention that the parish priest must be the Rector of the Sodality? 4. Whether Bishops, who are endowed with faculties by the Apostolic See to grant Indulgences to Sodalities which they have established in their own Dioceses, must necessarily use the formula approved by the Most Reverend Clement YIU, under penalty of nullity, or whether it will suffice to erect them with a diploma of any formula, signed with the Episcopal seal, in which, as mentioned in the aforementioned Apostolic Indult, mention is also made of the necessity of enrolling the names of the members in the Sodality's register, and also of the distance from Vandes, as prescribed by the Most Reverend Clement VIII in his Constitution?

R. To question 1: Affirmative. To question 2: Provided that the Sodalities are canonically erected, and the members fulfill the works prescribed by the Supreme Pontiffs for obtaining the Indulgences attached to their respective confraternities, and that the members themselves have been legitimately enrolled in the confraternity, a partial or general non-observance of the statutes does not impede the acquisition of Indulgences, because the statutes are given rather for the regulation and for the proper admin-

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istration of the Sodality, and not at all as works prescribed for obtaining Indulgences. To question 3: Affirmative, inasmuch as the parish priest is appointed by the Bishop who establishes the Sodality to receive the members, even if no mention is made of this in the statutes. To question 4: Regarding the first part: Negative. Regarding the second part: Ordinaries must conform to the particular Apostolic Letters obtained by the Ordinaries themselves, and where in the concessions it is stated: "Observing the Constitution of Clement VIII," this refers to the conditions enunciated in the Constitution, which must be observed, and not to the formula, which refers to Superiors Regular in erecting Sodalities only within their own Orders.

[*Latin ed. p. 715*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF LEOPOLI, OR PRZEMYSLE, REGARDING MARRIAGE. March 21, 1892. Session 24, chapter 1. Concerning the validity of marriages.

SUMMARY OF FACTS. Count Michael Plater Syberg, a man over thirty years of age, and Henrica Laczynska, a young woman of four years, were lawfully joined in marriage on July 22, 1886, in the parish church of Kuthorz, in the Archdiocese of Leopoli. Father Vincent Szarlinski, a member of the Order of Capuchins and administrator of the same parish, was present. On the very day that the marriage was begun, the spouses, following the customary practice, embarked on a journey of pleasure. Soon after, they traveled together through several cities in Austriae and Galliae, until, returning to their homeland, in the waning months of September or the beginning of October, Henrica, being ill, went to her father's house, where she remained for some time. Afterward, she returned to her husband, and together they came to Leopoli, where the spouses resided briefly until the beginning of January of the year 1887, when they completely broke off their conjugal life. On October 25, 1888, the Archbishop of Leopoli, of the Latin rite, in response to the request of Count Plater to the Holy Congregation, and after receiving a summary of the facts and hearing the testimony of the Countess, stated that she had repeatedly declared, under oath, that she had never had marital relations with her husband, and that this enigmatic behavior of the spouses could be explained "if one considers the rumors that were circulating about Henrica, and that she herself has confessed: namely, that shortly before her marriage to Count Plater, she was not conceived by him, but by another man, and that around the end of January of 1887, she gave birth to a child in Leopoli, which lived only briefly." Furthermore, the same Archbishop added:

[*Latin ed. p. 716*]

716 LEOPOLIEN. OR PRESMILIEN. "Finally, it must not be overlooked that in this place, there is the case of Henrietta, in which Count Plater,

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in these last days, vehemently refused to consent to the marriage, but promised her 125,000 florins, Austrian currency, if she declared herself to be null, and furthermore, a notarized document has already been drawn up."

SYNOPTIC DISCUSSION: DEFENSE OF THE MAN. The man's advocate, having previously presented a series of events that preceded the marriage, and which followed, seeks to demonstrate the machinations and intrigues by which Count Plater was surrounded, in order to hasten the marriage with Henrietta Laczynska, who was already pregnant by another man, as she herself testified in her sworn examination. The mother forced her daughter to marry, threatening her with poison and a knife, in order to conceal the crime. To this end, she recounts that Henrietta's mother had a mediator, her brother, the tonsured Vincent Szarlinski, to whom, through repeated and insistent pleas, the Count was forced to interrupt the treatment he was undergoing at the baths in Kis-Kajan, as Doctor Stamler testified. And, despite his repeated requests for delay, the brother Szarlinski responded urgently, setting a date for the exchange of rings, and instructed that the man be present on July 4th, the date set for the marriage, so that no harm would come to the Laczynski family. Furthermore, the advocate adds that Henrietta's mother herself exerted pressure, claiming to be mortally ill, in order to ensure that she would live to see her daughter married before her death. The advocate states that the marriage, celebrated under these unfavorable auspices and machinations, had an unhappy outcome, so that on the wedding journey, the Countess suffered a miscarriage, avoided the company of her husband, and did not lie with him, not only in the same bed, but not even in the same room. Indeed, in the lodgings where they were together, as witnesses testified, the Countess would lock the door of the room in which she slept with a maid. From the woman's behavior, one can infer a certain state of mind.

[*Latin ed. p. 717*]

LEOPOLIEN, OR PRESMILIENSI. 717. He recounts that the aversion and invincible antipathy towards the husband stemmed from the impossibility of consummating the marriage. Furthermore, the advocate addresses three points of fact, which were the reasons that led the husband to provide for his wife, so that, as he himself stated, he would not lose his assets, which would be seized within the Russian Empire. He adds that nothing would hinder, and much less diminish the truth of the sworn testimony, if the husband had promised to pay a considerable sum of money through a notarial deed, in order to free himself from the invincible antipathy and the odious cohabitation, moved by compassion for the countess, who, lacking any fortune, was a victim of her mother. However, the advocate warns that the husband made this promise not because of any falsehood that the woman might deposit in a sworn examination, but so that she might

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confess the truth solely from her conscience. Therefore, the husband urged her directly to confess the truth, and he presented three grounds or reasons for dissolving the marriage to her: 1. that she entered into the marriage with the husband under duress from her mother; 2. that the mutual aversion was caused by the lack of conjugal relations; 3. that she herself desired to be released from this abnormal bond. Moreover, as the advocate observed, the woman did not fully comply with all the husband's requests, and therefore she fervently implored the Bishop not to allow her depositions to be detrimental to the opposing party; for, speaking sincerely about her prejudice, she feared that she would no longer receive the promised support. For she spoke only of a slight fear in her situation regarding the coercion of her own mother, although some witnesses testified to threats from her mother up to the point of violent death. Although the countess, with regard to the nullity, did not conclude anything from the grounds of force and fear, nevertheless, the advocate observes, she sincerely and truthfully confessed the impossibility of consummating the marriage, not only in the sworn examination, but in all her responses. He points out that this last, noteworthy confession opens a safer path to obtaining the grace of dispensation, so that no odious questions may arise concerning the nullity itself. Furthermore, the advocate has certain points to make regarding this process.

[*Latin ed. p. 718*]

718 LEOPOLIEN. OR PREMISLIEN. concerning its form, of which the most important aspects have been explained above. It affirms that nothing of substance has been omitted from those matters prescribed in the cited Benedictine Constitution and the Instruction of the Holy Congregation of Councils. Indeed, all the cited witnesses were legitimately present; it was, however, impossible for the episcopal court to hear the contumacious and loquacious. The process notes that the contumacy of a few does not necessarily render the proceedings null, as the Holy Congregation has held this view in Parisien, concerning the marriage dispensation of March 28, 1857. After these preliminary remarks, before addressing the matter, he introduces several points regarding the criteria and the state of the question. First of all, he notes that, consistently with the prayers presented to the Most Blessed Father, although a formal discussion regarding a dispending impediment arising from reverential fear should be avoided, nevertheless, a serious doubt arises concerning the validity, so that it should be considered among the causes for granting a dispensation. Indeed, the doubt, which pertains to essential qualities of marriage, provides at least a very serious reason for granting a dispensation, lest the spouses be exposed to the dangers of celibacy, or be condemned to a burdensome union, as Alexander III, chapter 14, *De sponsale*, states: "It ought to enjoy complete security, whose intention must be investigated, lest, through fear, it say that it pleases it when it hates it, and follow the consequences that usually result

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from unwilling marriages." Furthermore, he recalls that, according to the constant discipline of the Church, two conditions are required in these dispensation judgments, namely, the lack of consummation, and some just cause, from which the Supreme Pontiff may be moved to grant a gracious concession, as taught by the Holy Congregation, up to the most recent documents of Parisien and Liburnen, of January 23 of the current year, 1892. He adds that, if the consummation is lacking, the dispensation is more prudently granted, whatever the cause may be, whether it be antipathy, impotence, or even other tricks of the devil, as learnedly commented on by Gonzalez in chapter V, *De frigidis, et male datis*. Therefore, he concludes, whatever the cause of the lack of consummation, the bond of marriage is imperfect in its firmness and indissolubility.

[*Latin ed. p. 719*]

LEOPOLIEN. OR PRESMILIEN. 719: "Indeed, they are not made one flesh, unless a perfect union takes place between them, so that they are one in flesh; if, however, this consummation is lacking, even the indissoluble union is wanting, which it is forbidden to break. Therefore, the Roman Pontiffs, interpreters of the divine word, have consistently granted dispensations in cases of marriage that is simply valid, for the help of the Christian people. And it is not surprising that such petitions seem to multiply in our age, since this arises from the increased number of the faithful and from various passions, and therefore, it should also contribute to the greatest glory of the Holy See. Finally, he notes that the Holy See should be merciful in the strictness of these trials, which are otherwise required in judgments concerning the absolute nullity of marriage. Pignatelli, *Consult. Canon.*, 140, n. 14. Ursaya, *Disc. eccl.*, 21, n. 136. Cosci, *De separatione a coniug.*, book 3, chapter 2, n. 285. Therefore, when the impossibility arises of obtaining physical proof, then moral certainty alone remains, which is sufficient, and which is entrusted to the wisdom of the judge and to religion, without the intervention of deceptive expertise. For this moral certainty is to be sought from the matter itself, that is, a moral and not infallible proof, as Cosci, cited above, states in chapter, n. 17, because infallibility is only required in supernatural matters, but in natural matters, and in the external forum, that which is considered a legitimate proof is that which the laws prescribe.' To this, Pignatelli, volume IV, *Consult.*, 219, agrees, stating: 'In those matters which are difficult to prove, testimony is held to be a legitimate proof.' Also, the Rota, Decree 6, n. 8, and Decree 124, n. 12, *cor.*, Mantica. - These principles, the speaker warns, must be applied in the case where the Holy Congregation had previously examined all matters and had restrained the discussion of witnesses, namely those of the seventh hand, and the judgment. With these observations, he develops the evidentiary part in two sections. Although he asserts that the question concerning the validity of the marriage is to be overlooked, nevertheless, since, as has

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already been indicated, this is the principal reason for the dispensation, he recalls certain things concerning this matter in the first place. Indeed, he notes the reverential fear instilled by the mother, as in the case of Henrietta, who was in a trembling condition.

[*Latin ed. p. 720*]

720 LEOPOLIENSI. OR PRESMILIENSI. When the marriage was celebrated with Count Plater, or when the witness Fuchs gave his testimony, and others, if to this is added the disturbance by which Henrietta was almost driven to collapse while the marriage was being celebrated, it would seem, considering the state in which the girl was, that she experienced a very great fear due to a reverential dread. Therefore, the advocate points out, the question remains untouched, and there is a positive doubt regarding the nullity of this marriage, especially because, after the Council of Trent, even if the fear is removed by cohabitation, the marriage is not validated unless it is contracted again, using the same form of the Council; as is stated among other things by the Holy See in the case of *Nullitatis matrimonii* in Palermo, September 20, 1719. Therefore, he adds, it is reasonable that Count Plater requested that Henrietta openly and frankly confess about this coercion. But, getting closer to the matter, the advocate continues, it is undeniably proven from the procedural acts that this marriage was not consummated. Indeed, after the sworn confession of both spouses before God, made in the two courts of Leopoli and Presmili respectively, all the characteristics of truth and sincerity are present, especially considering the dignity of the persons. These persons, who have confessed sacrilegiously before God and the Church, cannot be suspected, especially since everyone testifies that neither of them is capable of lying. Certainly, the advocate observes that Count Plater, not only in his petition and in all his actions, but also formally in his oath, declared the marriage to be unconsummated due to an invincible antipathy. As for the woman, in addition to what she stated in the Leopoli court, as the Archbishop reported, the advocate believes it should be noted that, before the Presmiliensi judge, under oath and without considering any Pontifical dispensation, she frankly stated that she had slept in the same bed only once, without any marital act having taken place; which she affirmed without contradiction. Finally, the advocate affirms that Henrietta's sincerity is proven and manifestly demonstrated by the fact that, when the marriage advocate asked her if she had done so in accordance with the promise made to her husband, or rather, according to her conscience, she...

[*Latin ed. p. 721*]

LEOPOLIEN. OR PREMISLIEN. In the year 721, the question was resolved by the response: that she had acted according to the dictates of her own conscience, contrary to the will of her husband. The advocate, observ-

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ing the sworn testimonies of both spouses, noted that the witnesses, by the laying on of hands, fully corroborated their statements, both husband and wife affirming that they were bound by their faith. To this, he recalled the testimony of the witness Fuchs, the steward of the estates, who fully agreed with what the aforementioned steward had reported regarding the circumstances of this marriage, and the Count Stanislaus Plater, who recognized his own nephew from a young age, testified as follows: "I give credence to all the testimonies of Count Michael, whom I have known since my youth." Nor was the Countess Barbara Los dissimilar. To these could be added the testimonies of Alexandra Machiewicz and her husband, the Countess Bokowska, and other witnesses, whose statements are summarized. Therefore, from all these things, the advocate argues that it must be believed that these were religious spouses, born of a noble lineage, who, having confessed the inconsummation of their marriage under oath, would have committed the most sacrilegious act if they had consummated the marriage. He defends his position by citing the decree of Celestine III, *lib. Decret*, title 15, *De frigid*, and *male fie*, chapter 6: "But if both should confess that they have never known each other, with the laying on of hands by relatives or neighbors, if relatives are absent, then, according to the Holy Gospels, each, by oath, should declare that they have never become one flesh, and then it seems that they are able to enter into a second marriage." He recalls that the Holy Congregation has always upheld this decree in all cases where a physical examination of the bodies is lacking, so that this remedy of dispensation is not denied to widows and those who are already corrupted. *Sánchez de Matr., lib. VII, sup. 108, n. 6*. Regarding the confession of the woman, to whom it was of the greatest importance to admit consummation, attention should be paid to what Cosci teaches in *de separ. coniug., lib. 1, cap. 15*, namely that every woman deserves to be believed if, after having made her vows, she excludes consummation by her own confession, as has happened in this case. This confession is found in the Records, Volume XXIV, page COLXXXVIII, 46.

[*Latin ed. p. 722*]

722 LEOPOLIEN. OR, PREMISE. It is understood that anything which removes doubt concerning the consummation of the marriage is relevant, as the Sacred Roman Rota, in Decree 101, n. 5, and in another case, p. 2, has stated, remembering the strict terms of the sleep of both spouses. Furthermore, the Advocate argues that the Holy Congregation is accustomed to granting a dispensation when the sworn testimony of both spouses is supported by the testimony of a third party, as in the Dispensation of Melevita, February 8, 1789. See Perez on Matrimony; Tropper on Impediments, part 2, session 2, etc. Moreover, the Advocate insists that the proof of the lack of consummation can be strengthened by considering the circumstances that preceded, accompanied, and followed the marriage. For example, it is

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said that Henry's love for his mistresses, who deprived him of the flower of virginity, is relevant; also, the invincible mutual aversion of the spouses, by which they avoided each other, and the fact that the husband, abhorring his wife, was unable to consummate the marriage. To these, it must be added that the wife slept in a separate room and with closed doors, and that, although she sometimes, at the instigation of her mother, spent about an hour with a companion, she nevertheless did not attempt to have intercourse, as she herself confessed in a sworn examination, showing her prejudice. This last point is further clarified in a letter from Henry to the Prefect of the Sacred Congregation, which was presented outside of court. And indeed, the Advocate adds, a woman who is pregnant usually avoids the company of a man and finds his actions unpleasant. See Freschi, Legal Medicine, p. 1, c. 6, question 2. However, the Advocate reminds us that, in order to dispel the presumption of law arising from peaceful cohabitation, which could suggest the consummation of the marriage, it must be remembered that this general principle of law is subject to exceptions in practice, and that this is reinforced by the authority of Cosci, book 1, on separation, chapter 16, n. 27, where it is stated that the Sacred Roman Rota has held the same opinion regarding the strict terms of the sleep of both spouses in the same bed. - There, "Because this presumption is removed by contrary proof, resulting from the confession of Julius made before the Most Holy Lord, in whose questioning he affirmed that the marriage was not consummated. Although the presumption is strong, both in law and..."

[*Latin ed. p. 723*]

LEOPOLIEN. OR PRESMILIEN. 723, by law, admits of proof to the contrary, based on the confession of the confessor himself. "Therefore, a stronger argument can be deduced here, since in this case, not only the woman's sworn confession agrees, but also that of the man, who immediately from the beginning protested against this novelty in the marriage, and who only cohabited with his wife briefly. " Furthermore, cohabitation and living together, as Ursaya observes in Volume II, Part I, Disputation 3, paragraph 45, do not destroy the quality and denomination of marriage, when it has not been consummated with effect, as Conrad states in *Praxis Dispensat*, Book 8, Chapter 7, paragraph 32. "However, the presumption of the consummation of marriage in the matter is challenged by the advocate due to antipathy and mutual opposition. Indeed, Cosci, in the aforementioned work, Book 3, Chapter 2, paragraph 236, states: 'It seems more important to consider the confession of those spouses who have sworn to abstain from carnal intercourse with each other due to antipathy.' " Nor, he adds, should one resort to physical impotence, since many moral causes, especially hatred and antipathy, can prevent consummation, as psychologists and physicians teach. *Dizionario Classico di Medicina*, under the entry "antipatia." Also,

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Tortosa, *Medicina*, Part I, Chapter 1, paragraph 4: "This is confirmed by Mahon, *Medicina Legale*, Volume I, Chapter 10, and finally, Doctor Anthony Nicotich, Imperial Austrian physician, recounts in his writings that he has encountered certain cases in which the female libido is related to one woman, but not to others." The advocate adds a physical argument based on the fact of pregnancy, admitted by the woman to her own detriment. For it is affirmed, by unanimous experience of doctors and midwives, that the uterus in pregnant women is impermeably closed. Thus, Barzellotti, *Venere Forense*, Book I, Chapter 181. From these and other reasons, he concludes that in this case, there is a lack of true and formal intercourse, which is required in the matrimonial bond, so that the spouses become "one flesh," since "one flesh" is not made "unless the man sows within the woman's vessel," as Sánchez teaches in *De Matrimonio*.

[*Latin ed. p. 724*]

724 LEOPOLIEN. OR PRESMILIEN. Disp. 11, n. 11, according to the opinion of St. Thomas. Picler, *Ius Canon.*, lib. IV, tit. 19, n. 2, etc. All these things, considered together, tend to produce that moral certainty which the Sacred Congregation has before its eyes, at least in a similar manner to the physical proofs, which often increase the difficulty in investigating the consummation. Indeed, it is recorded in Gandaven, December 17, 1845, that a dispensation from marriage, simply ratified, had been granted, even though there was only moral certainty that the corporal union had not taken place, because the body of neither spouse had been examined. Similarly, in Parisien, March 28, 1851, and June 20, 1858, the Marquis de Grolée, a young man scarcely out of college, denied that he had consummated his marriage with a certain Caillard, despite having sworn to the contrary. Although they had lived together for six months, and the woman swore that a carnal union had taken place, and although the advocate for the marriage vigorously urged the objection of a restricted negative, the Archbishop countered, and the law civil stood aside, the moral argument prevailed in favor of the dispensation. Nor is this dissimilar in Csanadien, January 31, 1863; in Lycien, June 30, 1877; in Viennen, March 23, 1878; and most recently in Wladislavien, June 15, 1889, in all of which cases, with the inspection of the bodies, and often with the sworn confession of the non-consummation of only one party, supported by the testimony of seven witnesses, a dispensation was granted. Finally, he notes that the most famous case of Trieste, December 11, 1876, was concluded according to the same criterion of moral certainty. There, he says, the spouses had lived together for eight months; the wife was pregnant before the civil tribunal; nevertheless, the sworn deposition of the husband prevailed. Therefore, the advocate concludes, it is easier to grant a dispensation in a case where there is a double confession from both spouses. Briefly, in another section of the discourse, when enumerating the causes for a dispensation, he states

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that this investigation does not require any particular kind of proof, since the whole matter depends on the benignity of the Supreme Pontiff and the Sacred Congregation. And first, he alleges a serious doubt regarding the validity of the marriage, which here, according to...

[*Latin ed. p. 725*]

LEOPOLIEN. OR PRESMILIEN. 725. As previously stated, it is contended that a marriage can be declared invalid either because the contract was entered into through malicious deceit and therefore ought to be annulled, or because a reverential fear has probably deprived the consent of one party of its freedom. Furthermore, it is known from Coscius, *op. cit.*, book 1, number 241 and following, that this provides a just and reasonable cause for dispensation. Three hypotheses can be considered. Firstly, 1. the validity of the marriage is so doubtful that there is no hope of a favorable outcome, and in this case, in order to end the dispute concerning this invalidity, dispensation is considered the best and most prudent course of action, which is a proper administration of justice. Secondly, 2. added reasons suggest a value that is so close to nullity that it would be reckless to challenge its validity, and therefore Navarrus, *Cons.* 3, *De spons.*, book 4, also teaches that there is a just cause for dissolving it. Thirdly, 3. although there is no doubt about the validity of the marriage, nevertheless, the very artifices, circumventions, and reductions, if they were employed, are of such a nature that they seem to compel the Supreme Pontiff to grant a dispensation. Decius, *d. cons.* 112, under number 5, verse 10, volume 17, states: "And this cause also seems to consider the public good, in order to prevent the evils of men." And in a similar case, Peter of Anchar considers a just cause for dissolving the marriage when a young man, through his own carelessness, was induced by the cunning of a woman to enter into a marriage that was not suitable for him. Therefore, when fear diminishes concord, it provides a reasonable cause for the Supreme Pontiff to grant a dispensation from the bond that was entered into through deceit and machinations. Furthermore, the advocate recognizes as a canonical cause the extreme antipathy, and the hatred that exists between the parties, especially between families of noble birth, because of this marriage. Indeed, he says, the count was so indignant that he was willing to incur a great loss of his patrimony rather than live with the woman he disliked. This indignation and impossibility of reconciliation are clearly evident from the letters he wrote to the Bishop. This aversion and discord, with the consent of the parties, provide a sufficient reason for removing this bond that was formed.

[*Latin ed. p. 726*]

726 LEOPOLIEN. OR PRESMILE. The cause of discord is explained by Sánchez in *De Matrimonio*, dispensation 10; by Caietanus in *Opus*, vol.

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1, responsion 28, etc. And the Holy Congregation has maintained this view. The advocate recalls that on January 20, 1719, he spoke of the marriage of Anne Pallavicini to James Imperiali, where, with proven moral certainty of the impediment, a just cause for dispensation was recognized, "lest quarrels and enmities arise, not only between the spouses, but also among the relatives of both parties, which could lead to the detriment of public tranquility." Ursaya, cited above, op. vol. 3, p. 2, discourse 21, and others, concur with this.

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENTAL BOND. On the other hand, the defender of the marital bond states that the marriage was entered into with mutual affection. For, as soon as the Count saw Henrietta, he was captivated by her, and he testified to this in the judicial examination. This is also fully confirmed by the witnesses, Alexandra Mackiewicz and Countess Barbara Los. Furthermore, the woman, he says, did not cease to reciprocate the Count's affection. Although she may have felt somewhat reserved the first time he spoke to her, later, through familiar intercourse and exchanged gifts, it is evident that her affection for him was greatly aroused. Moreover, the defender of the sacrament adds that the Count did not delay in bringing about the marriage. For the Count, under oath, affirmed: "From the beginning, Henrietta pleased me, and I endeavored to celebrate the marriage with her quickly." And this was also testified to by the Bishop of Presmile on September 12, 1889. Furthermore, the mutual affection with which the betrothal began is clearly shown by what the woman recounts. Indeed, when they, as newly betrothed, went to the garden to converse with each other, he said to her: "I feel that we will be happy." From that moment, she was truly affected by a true love for him. The marriage was celebrated after both spouses had requested a dispensation from two out of three banns, and after the Count, in particular, had shown no reluctance. After the marriage ceremony, the advocate for the sacramental bond recalls, the spouses went to the Count's estate in Srednawies, and from there to several other towns.

[*Latin ed. p. 727*]

LEOPOLIEN. OR PRESMILIEN. 727. In these places, they resided for more than two months, in the presence of witnesses and arbitrators. The defense argues that the count asserts that each of them resided in separate chambers, and that at night, Henry locked the door to Henrietta; but the husband, under oath, denies this, and the Bishop writes: "The spouses resided and slept in separate chambers, but the entrances were open from one chamber to the other."

These circumstances, however, seem to indicate a very strong presumption of the consummation of the marriage, especially since it is abundantly clear from the records of the proceedings that the spouses were not unin-

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telligent or unaccustomed to such matters.

Furthermore, the defense observes that, after the marriage, the spouses undoubtedly enjoyed each other's company in Louny. For Paroch Szarlinski, who had provided provisions for the newlyweds, when questioned as to whether and when he had received any gifts from them, replied: "I received nothing before the celebration of the marriage, but after their return from foreign lands, I received gifts from each of the spouses, but more valuable gifts from the count."

Therefore, the accuser argues that the count's testimony should not be believed, and that it is likely that the count and Henrietta, over such a long period of time, were indeed mutually in love, and that they conversed pleasantly and affectionately with each other, embracing and kissing, but that they did not dare to go to bed together, or, if they did, that there was a barrier between them.

It also seems unlikely that the spouses would have refrained from showing their desire to be together, because the husband believed that it was the wife's duty, and the wife believed that it was the husband's duty. Moreover, when asked by the presiding judge whether she was afflicted by boredom because she could not consummate the marriage, she replied: "I was very sad about it, to the point of being ill." And the countess, in her judicial examination, stated: "I gave and received a kiss while lying in the same bed; but I did not give her any other signs of affection, nor did she show me any signs of affection during the hour that we remained in the bed."

The defense argues that the credibility of the testimonies of the spouses and the witnesses must first be determined, because the count has confessed that in the beginning, he told no one about this.

[*Latin ed. p. 728*]

728 LEOPOLIEN. OR PRESMILIEN. had said, but only when he had contemplated divorce; at that time, he had allegedly said this to Henry Fuchs, who was present at a very suspicious meeting. As for the Countess, it is observed that, before she appeared before the court, the Count had, in the proper legal form, sworn before a notary to pay 125,000 florins to his wife, after the marriage was declared dissolved. Furthermore, the Countess testified under oath that she had received a document, which she was to sign; which contained declarations, carefully worded and written by her own hand by her husband; that she had indeed been forced into the marriage, from which she wished to be released. "I made a copy of these declarations and signed them," said the woman. If these are added to what the Bishop of Presmilia testified, the defense concludes, it is clear that the spouses were conspiring to enter into a marriage of convenience, and to send a message, as if the matter were being handled according to the will of both spouses. The Count Plater, the defender of the sacrament continues, was led astray by the false notion of a dissoluble marriage, whenever the

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parties agree, as testified by the Archbishop of Presmilia, and the wealthy Countess Laczynska, pressed by poverty, was ready to do anything. It may indeed be objected that the agreement between the spouses concerned only the demonstration of a forced marriage, while, on the contrary, the present judgment concerns the matter of community of property. But the defender warns that this does not exclude the fact that an agreement had also been made regarding the community of property. Indeed, among the declarations made by the Count to his wife, he observes that the following is found under number 2: the cause of aversion towards each other is the absence of conjugal relations. Therefore, that document which Henrica transcribed, and which Bursynski was to deliver, should have been presented, as well as those letters which are mentioned in the examination, either by Henry Fuchs or by the Count himself; and all of these are absolutely necessary to prevent collusion and fraud. Therefore, it is regrettable that neither these, nor any other letters of the Count, were included in the procedural acts, and that the letter of Fuchs mentioned in the summary is completely lacking.

[*Latin ed. p. 729*]

LEOPOLIENSIAN. OR PRESMILEAN. 729 Furthermore, the defender of the sacrament adds that the patron of the Count Plater will present certain documents in a supplementary summary and in order to provide information. For he recalls that the current law in the Sacred Congregation [S. O. C.] § 19 prescribes: "Documents and observations presented unknowingly after the responses will not be considered." And he cites the Constitution of Benedict XIV, by the mercy of God, § 7: "Whatever, having not been legitimately cited or summoned to that person (the Defender of the Bond), has been completed in court, we declare to be null and void, and we wish it to be considered as if it had not been cited or summoned, just as if the party to be cited had not been cited, and which, according to the prescriptions of the laws and canons, was absolutely necessary for the legitimate validity of the judgment." Moreover, he recalls that a petition is the basis and foundation of any judgment, as Leurenius writes in *Formularum Ecclesiasticarum*, book 2, questions 197 and 208: "It must clearly and distinctly express the matter requested by the plaintiff, the action, and the judgment must be rendered according to the form presented in the petition." Therefore, once the petition has been notified to the defendant at the order of the judge, and the defendant has appeared and a dispute has ensued, "the plaintiff may no longer change the petition." Furthermore, from a letter from the Archbishop of Lviv to the Sacred Congregation, dated October 25, 1888, it is gathered that the petition was presented by Count S. O. at the beginning of the year 1888, and that Henrica could not be heard until October 15 of the same year. Indeed, these words are found there: "By your most esteemed letter of February 29 of the current year, I received instructions to report, after hearing the wife of Count Michael Plater, Henrica, regarding

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the Countess Laczynska, Countess Plater, in the matter of the petition of her husband to the Apostolic See... etc. But I have been unable to fulfill this mandate up to this day, because, residing outside my Diocese, she has been summoned five times due to various obstacles presented by her, and among these, her infirmity... until October 15, when she appeared before my delegate, on which day the following statements were first recorded." However, it should be noted, the defender points out, that Count Plater appeared on October 5.

[*Latin ed. p. 730*]

730. LVOV. The Reverend Prelate recalls that in 1888, namely ten days before the Countess was to appear for examination before the archiepiscopal court of Lviv, a formal agreement was concluded whereby Mr. Henry agreed to pay the aforementioned sum of one hundred and twenty-five thousand florins, and the Countess signed a *syngraph*, as mentioned above. He further recalls that after the Archbishop's response to the first petition, which he now, along with the related Sacred Congregation of the Holy Office decree, cannot find among the records of the proceedings, a second petition was submitted. The Countess's advocate claims that the first petition was amended due to a mistake. However, the defender is surprised that, in the present case concerning the lack of consummation of the marriage, the Countess learned that the Count, in the city of Rome, had been subjected to such treatment by his patron, although in the aforementioned letter to the Prefect, the Countess had warned, "Certain relations between two spouses only occur in the most intimate setting." He does not claim that the petition was amended without preserving its substance. For it is well known that in judgments, one contends not with assertions, but with evidence. And since, after the stipulation of 125,000 florins and the judicial confession form imposed by the husband on the wife, everything that appears in the records, it seems most necessary to the defender to ascertain what the Count or Countess thought about the marriage, or its value, or its consummation, before this time. However, there are even greater matters to be considered in this matter, the tutor observes. For he recalls that the Countess's patron, in the new petition, proclaimed that the marriage was forced, not because of the Countess's fear induced by her mother, but conversely, because the Count was led by Father Szarliski, through malice and violence, to enter into the marriage. Furthermore, it is incongruously asserted that the Count, then 38 years of age, was inexperienced in social life and deprived of all his protectors. And that mysterious concerns are attributed to a religious man to whom the Count, after the wedding trip, gave a gift of considerable value, by those who do not present the letters of coercion as evidence. The

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question remains, what is truly the case?

[*Latin ed. p. 731*]

LEOPOLIEN. OR, PRESMILIEN. 73. The intention of the actor. It is stated from Leurenio, loc. cit., 2, qq. 197 and 203, that this must be clear and distinct, because "if it suffers from equivocation, excessive generality, alteration of the petition... if the cause for requesting [something] is not expressed in the petition, the defendant is not obliged to respond." With this established, it is observed that in the new petition, a dispensation from a valid and unconsummated marriage is requested, "without any inquiry being made regarding the nullity of the marriage," and that the cause of this nullity is attributed to coercion exerted by an inexperienced companion, while, on the contrary, in the petition of the patron for the altar and hearth, the fear of the countess, instilled by her mother, is defended, of which, however, the petition is silent. Furthermore, it is noted that the entire controversy is presented under a single question regarding the dispensation, whereas it is well known, according to the practice of the Sacred Congregation, that causes in which not only consummation, but also the validity of the marriage is disputed, are discussed under these formulas: "1. Does the nullity of the marriage exist?" and, negatively, "2. Should the Most Holy [authority] be consulted regarding a dispensation from a valid and unconsummated marriage?" And rightly so, for it is added that a dispensation is an extraordinary remedy that is invoked whenever ordinary remedies are not available, and that it presupposes the validity of the marriage, since there is no place for a dispensation from a marriage if it does not exist. After having related all these things concerning the precautions taken and the method of proceeding in this case, the defender of validity observes, in accordance with his role regarding the merits of the case. From what has been presented so far, it is affirmed, without any doubt, that Michael and Henrica, by nature, neither inept nor unaccustomed, from July 22nd until the end of December 1886, were continuously together, with only a brief absence of the countess, and lived together peacefully. Since the consummation of the marriage cannot be demonstrated through the physical aspect of the woman, the proof is considered almost impossible. Regarding this, De Luca, De Matrim., disc. 9, no. 15: "A great difficulty arose for me, because it was a question of a *vidua* [widow], who had already slept with a man, and therefore I did not understand how it could be proven that the marriage was not consummated."

[*Latin ed. p. 732*]

732 LEOPOLIEN. OR PRESMILIEN. For although this may not be entirely impossible of justification, it seems exceedingly difficult, so much so that the difficulty is of a kind that borders on impossibility.

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Furthermore, this difficulty cannot be removed either by the confession of the spouses, nor by the testimony of a seventh witness. And with regard to the former, although the confession of the spouses is of no small importance when they have made vows to maintain the marriage, nevertheless, according to Sánchez, *De Matrim.*, book 2, disputation 45, paragraph 23: "it proves nothing in favor of the confessing parties." Indeed, the defender observes that not only the husband, but also the wife, in the present case, oppose the marriage. Moreover, he denies that the testimony of Count Plater should be given credence, both because of a bond of 125,000 florins, and because of a written agreement which the wife signed under duress and threats. He believes that this is very far from the truth, and that the spouses agreed with each other, both verbally and in writing, to give false testimony in court. Furthermore, he continues, although Henrica has striven in all things and in every way to obey, she nevertheless admitted that she had made a slip of the tongue in the judicial examination. For when the wife recounted that she had once lain in the same bed with her husband, under the same covering, the defender of the marriage insisted: "Do you therefore admit that you lay with your husband in the same bed and under the same covering?" To this, the wife replied: "I remember well, and I affirm with certainty that we lay in the same bed and under the same covering." Indeed, the defender notes that this greatly displeased Henrica, so that the woman who had written to him several times, stating that she desired nothing more than to follow his will, was forced to retract before the Bishop of Presmilien: "Someone has noticed," she said, "that I stated that I lay under the same covering, while the husband's testimony states that I stood above the covering, but in the same bed. It is possible that my husband has blessed me, when he asserted that I lay above the covering, so that I cannot be accused of lying." Following the same line of reasoning, he does not believe that Henrica has spoken the truth when she seemed to reveal her own wickedness.

[*Latin ed. p. 733*]

LEOPOLIEN, OR PRESMILE. 733 asserts: that she was corrupted before marriage, and that she gave birth to a child at the end of January 1887, whose father was not Count Plater. Indeed, since the marriage was celebrated on July 22, 1886, and the child, whom witnesses widely affirm was born prematurely, was born, according to the testimony of the Countess, at the end of January of the year 1887, it appears to fall under the well-known axiom: "The father is he whom the just marriage demonstrates." Furthermore, it is remembered that the parish priest testified that the girl's conduct had always been irreproachable; and therefore, if she was defiled, he believes it occurred after the marriage; this is confirmed by the fact that the child was born seven months after the marriage. It must also be noted that the Bishop of Presmile reported that the Count considered this reason,

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namely, the wife's transgression, to be sufficient grounds for annulling the marriage. With these facts established, the defender believes that nothing needs to be added regarding the opinion given by the patron, namely, that in the state of pregnancy, a woman could never, theologically, be said to have consummated the sacrament of marriage. Finally, recalling the seventh set of depositions, he observes that, out of nine witnesses examined, not one had heard anything, at a time not suspected, about the lack of consummation of the marriage, or anything similar, either from the spouses or from others. Therefore, the defender concludes that the testimony of witnesses who saw nothing and heard nothing at a time not suspected, is no better than the confession of the spouses in demonstrating the lack of consummation of the marriage. With these and other considerations, the purpose was to address the question of whether it is necessary to consult with the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated in this case. RESOLUTION. After deliberation, the Sacred Congregation decided on May 21, 1892, to respond: From the facts presented, it does not appear that there was a lack of consummation. FROM WHICH WE GATHER: I. It is difficult to prove the lack of consummation in marriages in which the woman is no longer...

[*Latin ed. p. 734*]

734. LEOPOLIEN. OR PRESMILIEN. A virgin, or a couple deemed suitable for marriage, are considered to have cohabited for a long time. II. This difficulty is not lessened by the confession of the couple, nor by the testimony of seven witnesses; these proofs are held to be worthless if they favor the confessing parties. III. It appears that the couple are colluding with each other against the stability of the bond, since they have made vows that marriage does not exist.

CASTELLANETA. FACULTY OF BINAND. On March 9, 1892, by summary petitions.

COMPENDIUM OF THE FACTS. In the town of Palagiano, in the Diocese of Castellaneta, with a population of more than 5000 inhabitants, there are, besides the parish priest, two other priests, one of whom resides in the parochial church, and the other in a chapel dedicated to Saint Roch, where he usually performs sacred duties on feast days. Since the senior priest has already surpassed the age of 70, and is frequently afflicted by illness, to the extent that he sometimes has to abstain from performing divine services, in the beginning of May of the previous year, the aforementioned parish priest requested permission from the Sacred Congregation [S. C. C.] to say an extra Mass, whenever on Sundays and other feast days, a third Mass was lacking. In response to the Bishop's letters, in which it was stated that the parochial church was insufficient for the number of the people, and that no outside priest was available, and with the force of special faculties, for the sake of charity, provided that a true necessity was present, and with

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the Bishop's conscience burdened, a response was given. However, in the following month of November, the Bishop received new petitions from the parish priest of Palagiano, requesting that he be allowed to say two Masses in the parochial church, even in the case when...

[*Latin ed. p. 735*]

CASTELLANETA. In the chapel of Saint Roch, 735 Masses were celebrated. And the response was received: "It does not seem fitting to grant this." Nevertheless, with the same prayers, and with the recommendation of the Bishop added, they were recently presented as petitions. The reasons given by the Castellaneta prelate are as follows: 1. In the parish of Palagiano, which numbers 5000 inhabitants, there are only two priests, including the parish priest. 2. In the aforementioned parish, there are two churches, namely the parish church, which is too small for the growth of the population, and the small chapel of Saint Roch, which is under lay patronage. 3. In the aforementioned chapel of Saint Roch, the patron undertakes to ensure that all liturgical functions are performed throughout the year, including the celebration of the mysteries of the Holy Sepulcher during the octave of Easter. Therefore, it is not fitting to allow, as the chaplain desires, the celebration of Mass on feast days in the parish church; rather, it is ordered that he celebrate entirely in his own chapel. This results in a third Mass being lacking in the parish, and many faithful are absent from the sacred services.

A SYNOPTIC DISCUSSION: THE GRACE SEEMS TO BE DENIED. Indeed, contrary to the petition of the parish priest, it is well known in law, from Cap. *Consuluisti* and from Cap. *Te Referente* concerning the celebration of Masses, that priests can offer the sacrifice of the Mass only once on the same day, unless necessity dictates otherwise. And if, with the addition of this circumstance, permission to celebrate twice can sometimes be granted, "it must be done only out of great necessity and with great caution," as Fagnanus notes in Cap. *hi ordinando*. We know that this prudent discipline and the Sacred Congregation of the Council have consistently adhered to this, as evidenced by the documents from Derthusen, August 20, 1768; Apten, May 8, 1734; Nicien, November 27, 1790; and more recently, from Arboreen, August 23, 1872; Avenionen, April 22, 1882; and Ortonen, March 29, 1890, in which, although a certain necessity appeared, the faculty of repeating Mass was denied.

[*Latin ed. p. 736*]

736 CONCERNING THE DISPENSATION TO BEND THE KNEES. It is well known that the Holy See used to grant a dispensation to bend the knees, provided that the reasons are present as expressly stated in the Constitution of Benedict XIV, or at least equivalent to those reasons. "However, this occurs, as explained by Lucidi in *De Visitatione Sacrorum Locorum*,

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part 1, volume 1, page 438, in the recent edition, when one parish priest is in charge of two parishes, or governs two very distant populations, or the parishioners cannot gather together at the same hour to hear Mass, and otherwise, another priest cannot be found." Therefore, in the present case, since three Masses are already celebrated on feast days, and the number of people does not seem excessive, it would rather be a matter of convenience than of necessity, and therefore, the reasons to grant the dispensation are not sufficiently present. This will become clearer if the Most Reverend Fathers will consider the case presented in Venice on February 28th of the past year, in which the parish administrator of the island of Burino requested the faculty to bend the knees for the fourth Mass, although he stated that it would be necessary to provide a Mass for more than seven thousand people, and the recommendation of the Most Reverend Patriarch was added; it was replied: "Considering all things, it does not seem expedient" (1). THE INDULGENCE SEEMS NOT TO BE GRANTED. However, it should not be overlooked that the repetition of kneeling may be permitted not only for reasons of necessity, but also, according to the words of the Glossa in Chapter *Consilii De Celebratione Missae*, "for reasons of honesty and utility." It should be understood that this refers to those who are listening to Mass, as declared by Benedict XIV in the cited Constitution. Therefore, it has happened that, whenever a large part of the faithful are deprived of the sacrifice of the Mass, reasons have arisen to grant the faculty to bend the knees. Thus, for example, the Sacred Congregation of Propaganda Fide, in the year 1832, informed the Bishop of Nicopolis in Bulgaria: "The Apostolic See grants this faculty for the spiritual good of the faithful, with the desire that all may be able to fulfill the ecclesiastical precept." Therefore, in the present case, the inhabitants of the place called Palagiano, without having requested the dispensation, easily fulfill the precept of hearing Mass (1).

(1) This question is present in Volume XXIII, 611.

[*Latin ed. p. 737*]

CASTELLETEN. They cannot fulfill [the requirements], but, according to the testimony of the Bishop, more faithful are deprived of Mass; the reasons for this should be carefully considered. Even more so, because at this time, in which public religious services have been so diminished in many places, the Sacred Congregation of Rites has considered it advisable to somewhat soften the rigor of the law in this matter, as can be deduced from the Decrees of December 16, 1876, Lingonen and Turonen, August 24, 1878, Mexicana, December 20, 1879, Vallisoletana, April 7, 1873, De Tülancingo, May 10, 1884; Gratianopolitana of the same day and year, Salernitana, May 4, 1889, etc. (1). Finally, it could be observed that the alleged situation in Venice does not entirely correspond to the present case, either because there, a fourth Mass was particularly requested so that women could prepare food for their husbands and families at a suitable time, or because it

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does not appear that the area around the parish church of the island of Burano has become unsuitable for the frequentation of the people. Having noted these things, the question arose as to what should be answered in prayer. RESOLUTION. Having considered the matter, the Sacred Congregation decided on March 5, 1892, to respond: "For the sake of prudence and the conscience of the Bishop, for a period of three years, let it be so."

FROM THE SACRED CONGREGATION FOR THE ORDER OF MINOR BROTHERS OF SAINT FRANCIS, REGULAR. Doubts regarding the recitation of the Divine Office. The Reverend Father Procurator General of the Order of Minor Brothers of Saint Francis, Regular, for Hispania, humbly submitted the following Doubts to the Sacred Congregation for the Order, for a suitable solution:

Doubt I. Are Regular Parish Priests in the Philippine Islands obliged to recite the Divine Office according to the Calendar of their Order?

(1) The question regarding Tülancingo is found in Vol. XVII, page 157; Lumine, page 139; Salernitana, Vol. XXII, page 154. The Acts are in Vol. XXIV, page CCLXXXVIII. Gratianopolitana, in the same volume.

[*Latin ed. p. 738*]

738 FROM THE SACRED RITUAL. And inasmuch as the matter is affirmative. Doubt II. Whether Regular clergy are obligated to recite the Office of Saints and the titular feasts of churches in which they preside as pastors, even if those Offices are not performed by the Religious of that Province? Doubt III. Whether such titular Offices ought to be recited by Regular pastors according to the rite of a Double of the First Class with an Octave; or whether it suffices for them to celebrate the solemn Mass of the titular feast of the parish? Doubt IV. Since the Most Holy Rosa, Virgin of Limana, was declared the Patroness of the Philippine Islands by the Apostolic See from the year 1670, it is asked: whether the Religious of the aforementioned Order residing there are obligated to recite the Office according to the rite of a Double of the First Class, even though the feast of the same Saint is noted in the Calendar of that Order with the rite of a Double of the Second Class only? Doubt V. From time immemorial, the feast of Saint Peter of Alcantara has been observed by the students of the Province named after Saint Gregory the Great of the Order of Friars Minor, Discalced, according to the rite of a Double of the First Class with an Octave, even though in the Calendar of the Order, the rite of a Double of the Second Class without an Octave is assigned. It is asked: whether the Religious of that Province can continue in this custom; or whether they ought to conform to the Calendar of the Order? And the Sacred Congregation, after carefully considering the report of the undersigned Secretary, and upon the earnest vote of another of the Masters of the Apostolic Ceremonies, decided that the aforementioned doubts should be answered as follows: Regarding questions I and II: Affirmative, according to other Decrees. Regarding question III: Affirma-

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tive regarding the first part; Negative regarding the second part. Regarding question IV: Affirmative. Regarding question V: Negative regarding the first part; Affirmative regarding the second part, at least until the legitimacy of the privilege is established. And thus it was written and declared on May 13, 1892.

8 CARDINAL ALOISI-MASELLA, S. R. C.

FATHER VINCENT NUSSI, S. R. C., Secretary.

[*Latin ed. p. 739*]

739 FROM THE RHEMS RITUAL. A question concerning the votive Mass of the Most Holy Heart. By Apostolic Indult, dated June 28, 1889, in the Archdiocese of Rhems, in churches where, on Thursday mornings, pious exercises are held in honor of the Most Sacred Heart of Jesus, a votive Mass of that same Sacred Heart is customarily celebrated. When, however, the Sacred Congregation of Rites responded on May 20, 1890, that such a Mass should be celebrated according to the rite by which votive Masses are solemnly celebrated, with the Gloria and Creed, and with a single Collect; hence, the Reverend General Vicar, the Most Eminent and Reverend Lord Cardinal Benedict Mary Langénieux, Archbishop of Rhems, humbly submitted the following question to the same Sacred Congregation, for opportune clarification: Whether these words, "votive Mass of the Most Sacred Heart of Jesus, to be celebrated according to the rite of a solemn votive Mass," can be understood to apply also to a Mass that is said, or sung, without chanting? And the same Sacred Congregation, after considering the report of the undersigned Secretary, and after a careful opinion from another of the Masters of the Sacred Ceremonies, judged it opportune to respond to the proposed question: Affirmative. And thus it responded and declared – on May 20, 1892. * CARD. ALOISI-MASELLA, VINCENTIUS NUSSI, Prefect. Secretary. OF THE CONGREGATION OF THE MOST HOLY REDEEMER. A question concerning the Mass and Office of St. John Damascene. The Reverend Father Nicholas Mauron, Superior General and Major Rector of the Congregation of the Most Holy Redeemer, humbly submitted the following question to the Sacred Congregation of the Most Holy Redeemer, for opportune resolution: The same Sacred Congregation, by Decree dated August 30, in the year 1883, approved the recitation of the historical Readings in the feast of St. John Damascene, Confessor, for the use of the students of the Congregation of the Most Holy Redeemer, and the Apostolic See assigned the day of May 13 to that purpose.

[*Latin ed. p. 740*]

740 FROM THE SACRED RITUALS: Since, by a general decree of the same Sacred Congregation, dated August 19, 1890, the aforementioned feast was extended to the universal Church, with the title of Saint John

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Damascene added, along with various changes made both in the Office and in the Mass, and the feast day assigned to March 27; the question is asked: "Are the members of this Congregation thereafter bound to observe the aforementioned general decree, both concerning the Mass and Office of Saint John Damascene, and also concerning the day assigned for the feast for the universal Church?" And the same Sacred Congregation, after mature deliberation on the report of the undersigned Secretary, decided that the aforementioned question should be answered as follows: "To the first part, affirmatively; to the second part, negatively, in this case." And it so wrote, and declared on May 20, 1892. C. CARD. ALOISI-MASELLA, S.R.C., Prefect. S. VINCENTIUS NUSSI, S.R.C., Secretary. VICENTINA: It is permissible to maintain the custom concerning processions... The Reverend Prior of the Church and Monastery of the Most Blessed Virgin Mary on Mount Bericus, of the Order of the Servants of the Most Blessed Virgin, near the city of Vicenza, with the consent of the Most Reverend Bishop of Vicenza, humbly submitted the following questions to the Sacred Congregation of Rites for appropriate resolution, namely: "Since, from the public of the city of Vicenza and from an ancient vow, two processions are held to the aforementioned Church, in which the Most Reverend Bishop, together with the Chapter of the Cathedral Church, and the parish priests, adorned in vestments, and the rest of the clergy and confraternities, are accustomed to participate; it is customary for the religious community to receive the processions at the church door, and for the Prior, wearing a cope and stole, to offer the arriving participants blessed water. However, when the Bishop arrives at the threshold of the temple, the Prior, having removed his stole, and with a prior kiss of the hand, hands him the aspergillum, so that the Bishop may bless the people. Question 1: Is it permissible for the Superior of the Regular Church on Mount Bericus to receive the processions at the door, wearing a cope and stole? 2. Is it permissible for the parish priests, who participate in these processions, to..."

[*Latin ed. p. 741*]

FROM THE SACRED RITUAL, 741: Is it permissible to enter the church of the Blessed Virgin Mary at Mount Beric with a stole? 3. And concerning points 1 and 2, it is requested that, as the established custom dictates, it be maintained. Furthermore, the same Sacred Congregation, after considering the report of the undersigned Secretary, and also a fervent request from another of the Masters of the Ceremonies of the Apostolic See, after mature deliberation, judged it necessary to respond to the following questions, namely: Whether the established custom can be maintained. And thus it responded on May 20, 1892. [Signed] CARD. ALOISI MASELLA, Prefect of the Sacred Congregation. [Signed] S. VINC Nussi, Secretary of the Sacred Congregation. FROM THE SECRETARY'S OFFICE: A BRIEF granting an

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Indulgence as many times as desired to the Carmelite Order for the feast day of the Blessed Virgin Mary of Mount Carmel. LEO XIII, Pope. For the lasting memory of this matter. That the devotion of the faithful towards the Blessed Virgin Mary of Carmel may increase, and that piety may flourish, from which abundant and salutary fruits may derive for their souls, we have, with a benevolent heart, granted a special privilege to the Carmelite churches, in response to the pious request of our beloved son Aloysius Mariae Galli, the esteemed Superior of the Order of the Blessed Virgin Mary of Mount Carmel of the Old Observance. Wherefore, with confidence in the mercy of Almighty God and by the authority of the blessed Apostles Peter and Paul, we grant to all and each Christian of both sexes who are truly penitent and have confessed, and who have received Holy Communion, that those who, on the sixteenth day of July of each year, when the feast of the Mother of God of Mount Carmel is celebrated, devoutly visit any of the churches or any of the public chapels, whether of the Brothers or of the Nuns of the entire Carmelite Order, both of the Discalced and of the Order of the Barefoot, in all places where they exist, from the first vespers until sunset on that day, and who there, for the concord of Christian princes, pray for the extirpation of heresies...

[*Latin ed. p. 742*]

742. Through the extirpation of schisms, the conversion of sinners, and the exaltation of the Holy Mother Church, let pious prayers be offered to God, and whenever this is done, We, moved by mercy in the Lord, grant a plenary indulgence and remission of all sins, which may also be applied, as a form of suffrage, for the souls of the Christian faithful who, united with God in charity, have departed from this life. This is granted, notwithstanding Our regulations and those of the Apostolic Chancery concerning the granting of indulgences, as well as other Constitutions and Apostolic Ordinances, and all other contrary provisions whatsoever. This grant is valid perpetually, for the present and future. We decree, moreover, that the same faith be given to these present Letters, whether transcribed or copied, and even printed by the hand of a public Notary, and sealed with the seal of a person constituted in ecclesiastical dignity, as would be given to the original documents, if they were presented or shown. Given at Rome, at St. Peter's, under the Fisherman's ring, on the sixteenth day of May in the year 1882. In the fifteenth year of Our pontificate. L. S. S. CARD. VANNUTELLI.

FROM THE SACRED CONGREGATION FOR INDULGENCES: Sodalities, under the title of the Blessed Virgin Mary Assumed into Heaven, established in various places to aid the souls detained in the fire of Purgatory, cannot enjoy the indulgences and privileges enjoyed by the Arch-sodality of the same name established in the city, unless they have been incorporated into that Arch-sodality.

Most Blessed Father, Hermes Martinelli, General Procurator of the Most

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Holy Redeemer, prostrate at the feet of Your Holiness, reports that an Arch-sodality was established in this venerable City, in the church of St. Mary, commonly known as Monterone, under the title of the Blessed Virgin Mary Assumed into Heaven, to aid the souls detained in the fire of Purgatory, and that the General Procurator of the Congregation of the Most Holy Redeemer, for the time being, was appointed as the moderator of that Sodality.

[*Latin ed. p. 743*]

FROM THE SACRED CONGREGATION OF INDULGENCES, 743. It often happens that Sodalities of the same name and title are established by the Ordinary of a particular place, by virtue of the power granted to them, through a special Indult, to establish Sodalities with Indulgences, with which the respective Arch-Sodalities enjoy in the City; without any presented petition for aggregation to the Arch-Sodalitiy by the supreme Moderator. This, indeed, as experience has demonstrated, is not at all conducive to the good of such a Sodalitiy. In these Sodalitiies, which are not connected in any way with the primary Sodalitiy which has been established by the Apostolic See as a center for others, unity of direction and conformity of pious practices gradually diminish, which are most beneficial for the increase of piety towards the souls of the Christian faithful detained in the fire of Purgatory, and also for the greater good of the members of the Sodalitiies themselves. Therefore, the aforementioned Supplicant humbly and earnestly implores the Holy See to graciously decree that Sodalitiies under the title of the Blessed Virgin Mary, assumed into Heaven, to aid the souls suffering in the fire of Purgatory, even though they have been canonically established by the Ordinaries of the places, nevertheless, cannot obtain the Indulgences and privileges granted to the Arch-Sodalitiy by the Roman Pontiffs, unless they have first been aggregated to the aforementioned Arch-Sodalitiy, with the consent of the Ordinary of the place, and with the testimonial letters of that Ordinary. And God, etc. The Most Holy Lord Pope Leo XIII, in an audience held on June 18, 1892, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, graciously granted the grace requested, observing all the laws that must be observed. This is valid forever, without any need for a Brief to be sent. Contrary to whatever may be. Given in Rome, from the Secretariate of the aforementioned Sacred Congregation, on June 18, 1892. A. CARD. SERAFINI L. * S. ALEX. ARCHIEP. NICOPOLIT. Secretary.

[*Latin ed. p. 744*]

744 FROM THE PARISIEN INDULGENCES. Whether an indulgence attached to the prayer "En ego, o bone Iesu" etc., can be gained twice by priests celebrating two Masses in a day. Father A. Boudinhon, Professor at the Catholic Institute of Paris, earnestly requests this Holy Congregation

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to provide a solution to this doubt: Whether priests who are obliged to celebrate two Masses on the same day can also gain the plenary indulgence attached to the prayer "En ego, o bone et dulcissime Iesu etc.," by reciting it after each Mass. The Holy Congregation for Indulgences and Sacred Relics, having considered the doubt on June 20, 1892, responded: Let the Decree of the City and the World, dated March 7, 1678, be given (1). Given in Rome from the Secretariat of the same Holy Congregation, on the day and year as above. A. CARD. SERAFINI, Prefect. L. & S. Archbishop of Nicopolis. Secretary. FROM THE THIRD CONGREGATION OF THE HOLY ROMAN INQUISITION: Doubts regarding the absolution of sins and censures, even those reserved to the Pope in a special manner, when the penitent is unable to personally approach the Holy See. Most Blessed Father, the Holy Congregation of the Inquisition, under the date of June 30, 1886, in response to the question (2) "I. Whether it can still be safely maintained that the absolution of sins and censures, even those reserved to the Pope in a special manner, can be granted to a Bishop, or to any approved priest, when the penitent is unable to personally approach the Holy See? "II. And, if not, whether recourse should be made, at least by letter, to the Most Eminent Cardinal Major Penitentiary for..." (1) In this decree, which is found in the collection of authorities in Ratisbon, number 18, at the end, the following is read: "However, the plenary indulgence granted to those who visit the church on certain days, or who perform another pious work, is granted only once in a day." (2) The Bishop of Brixen requested this resolution, which was reported in Volume XIX, page 47.

[*Latin ed. p. 745*]

To the Most Holy Congregation of the Inquisition, 745, in all cases reserved to the Pope, unless the Bishop has a special dispensation, besides the case of imminent death, in order to obtain the faculty of absolution? The following answer was given, approved and confirmed by the Pope: "I. Considering the practice of the Holy Penitentiary, especially from the aforementioned Apostolic Constitution of the Most Holy Pope Pius IX, which begins: APOSTOLICAE SEDIS, the answer is: No. "II. Affirmative: but in more urgent cases, in which absolution cannot be delayed without the danger of serious scandal or infamy, a burden placed upon the conscience of confessors, it is possible to grant absolution from censures, even with the censures legally prescribed, which are also specially reserved to the Supreme Pontiff, under penalty, however, of incurring those same censures again, unless, at least, within one month, by letter and through the medium of the confessor, recourse is made to the Holy See." When, however, doubts have arisen among the Doctors concerning these answers, the following are proposed to the Holy Congregation of the Inquisition for resolution: I. Does the answer to question 1 also apply to the case in which the penitent is perpetually prevented from personally traveling to Rome? II. In the answer

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to question 2, does the clause: "under penalty, however, of incurring those same censures again, etc.," refer only to absolution from censures and cases specially reserved to the Holy Father, or does it also apply to absolution from censures and cases simply reserved to the Supreme Pontiff? Finally, it is asked: III. Do modern authors, after the Apostolic Constitution *Apostolicae Sedis* (contrary to common law, Cap. Those who, 22, On excommunications, 6, v. 11; Cap. It is known, 13, On the sentence of excommunication, v. 39; and contrary to the Roman Ritual, Title III, chapter I, n. 23), correctly teach that, for those who, in the article of death, have been absolved by any confessor from any censures, whatever they may be, the obligation to present themselves to their Superior is only imposed upon the recovery of health, if the matter concerns absolution from censures specially reserved to the Pope, or is such recourse to the Superior also necessary in the case of absolution from censures simply reserved to the Supreme Pontiff?

[*Latin ed. p. 746*]

746 FROM THE SUPREME SACRED INQUISITION, Thursday, June 17, 1891. In the general Congregation of the Holy Roman and Universal Inquisition, after the doubts were presented, and with the vote of the Most Reverend Consultors preceding, the Most Eminent and Most Reverend Lords Cardinals, general Inquisitors in matters of faith and morals, were commanded to respond: To I. Affirmative. To II. Negative for the first part, affirmative for the second part. To III. Affirmative for the first part, negative for the second part; according to the resolution of June 28, 1882, session IV. On the following Friday, after these matters were reported to the Most Holy Lord Pope Leo XIII, in an audience given to the Reverend Father Assessor of the Holy Office, the same Holiness deigned to approve the resolution of the Most Eminent Fathers. I. MANCINI, Notary of the Holy Roman and Universal Inquisition. Most Blessed Father, X..., humbly prostrates himself at Your Holy Feet, and humbly explains as follows: It has been declared by the Apostolic See in writing that there is no reservation, if the matter pertains to the article of death; but it was added: in which, however, concerning absolutes, the obligation of obeying the mandates of the Church, if they should recover, is established, without any mention of the penalty of relapse, if these do not fulfill this obligation, nor any explanation given regarding the meaning of the words "obeying the mandates of the Church." Furthermore, from the decree of the Holy Office (June 30, 1886), in more urgent cases, absolution from censures can be granted even in a special manner, reserved to the Holy Father, but under certain conditions; but in the aforementioned decree, it was not stated whether this absolution is direct or indirect. From this, several difficulties have arisen. Therefore, the speaker asks: I. Whether the obligation of obeying the mandates of the Church, imposed by the Apostolic See, is subject to the penalty of relapse, or not? II. Whether the obligation of obeying the mandates of the Church,

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in the sense of the Bulla...

[*Latin ed. p. 747*]

From the Sacred Congregation 747 of the Apostolic See: Does this mean the obligation to appear before the Holy Father, or should it be distinguished from that? III. Is the absolution granted in more urgent cases, even when special censures are reserved to the Holy Father according to the decree of the Holy Office (June 30, 1886), direct, or only indirect? Thursday, August 19, 1891. In the general congregation of the Holy Roman and Universal Inquisition, after hearing the report regarding the aforementioned petition, and with the vote of the Most Reverend Consultors, the Most Reverend Cardinals, General Inquisitors in matters of faith and morals, ordered that the following be answered: To I. Affirmative to the first part; negative to the second part. To II. The obligation to *STANDI MANDATIS ECCLESIAE* (to stand by the mandates of the Church) implies the burden, whether by oneself or through a confessor, of appealing to the Holy Father, obeying his mandates, or requesting a new absolution from one who has the power to grant absolution from censures specially reserved to the Holy Father. To III. Affirmative to the first part; negative to the second part. On the following Friday, the Most Holy Father, Pope Leo XIII, by divine Providence, having graciously approved the resolution of the Most Reverend Fathers, communicated to the Reverend Father Assessor of the Holy Office. J. MANCINI, S.R. and U.I. Concerning doubts regarding the proof of the death of a former spouse. Most Blessed Father, We humbly request an authentic interpretation of the Instruction of the Sacred Congregation of Propaganda Fide of the year 1883, Concerning Ecclesiastical Judgments, Article IV, Concerning the impediment of marriage, § 43, regarding the words: "But if it concerns a marriage to be contracted, this can never be permitted until it is certainly known that the former spouse has died." Statement of the case. — Before the ecclesiastical tribunal of the Curia N., two cases were being heard to this effect, in which a man, who before 30-38...

[*Latin ed. p. 748*]

748. After years had passed since [the individual] disappeared, and no news of him was received, he was declared dead, and it was permissible for the abandoned spouse to enter into a second marriage. The judge, in the initial instance, having conducted the proceedings in due form, did not present even a single certain witness regarding the death of the spouse; nevertheless, he presumed the death to be legally proven based on conjectures, indications, public notices, and a prolonged absence of so many years, and granted the accusing party the freedom to contract a second marriage before the Church, which had already been entered into civilly, and children had been conceived. The judge in the appellate court simply re-

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jected the sentence, stating that this was a case of contracting marriage, and therefore, marriage to a second party is never permitted unless it is certain, that is, through documents or witnesses, that the first spouse is dead; conjectures, indications, and other circumstances concerning the death of the first spouse are to be considered only in the case of a marriage contracted, when the validity of the second marriage is in question (Cf. *Instructio de Iudiciis ecclesiasticis circa causas matrimoniales* issued by the Sacred Congregation of Propaganda Fide, year 1883, § 43, at the end) (1). Therefore, a fundamental doubt arises: how can the literal meaning of the words in the *Instructio de Prop. Fide* be reconciled with the most recent *Instructio S. R. U. Inquisitionis, De status libertate ante nuptias probanda* of August 29, 1890, which states (2): "In contracting marriage, 'if witnesses testified that the parties had a wife or husband, but that they were dead, permission shall not be granted unless first an authentic testimony is received from the rector of the hospital in which the aforementioned died, or from the rector of the church or cemetery in which their bodies were buried. If such testimonies cannot be obtained, other proofs, which may be admitted according to common law, are not excluded, provided they are legitimate and sufficient... The judge, observing the necessary precautions..., will be able to judge whether permission should be granted or not.'" Furthermore, the *Instructio S. Congreg. Inquisitionis* issued to the Archbishop of N. on February 6, 1863, admits the declaration of the death of a spouse when no witness can be found, and consequently, in the case of contracting marriage, the judge, based on the facts presented, can not only permit, but even must moderate his judgment. (1) This instruction was reported in Vol. XVIII, 369. (2) You have this instruction in Vol. XXIII, 189.

[*Latin ed. p. 749*]

FROM THE SACRED CONGREGATION'S INSTRUCTIONS, 749: "Indeed," the aforementioned Instruction states, "it sometimes happens that no witness can be found. Then conjectures, presumptions, and indications must be gathered. These must be obtained primarily from the spouses themselves. It must be inquired whether they were joined together by mutual consent, and whether they pursued each other with mutual affection, whether they lived a life of good morals and religious devotion, whether they had children, and stable property; whether the one who is said to have died was of infirm or good health; whether there were wars, seditions, or plagues in Buschbell." The Cardinal Prefect of the Sacred Congregation, in letters to the Archbishop of N., dated February 6, 1863, writes: "Arguments can also be drawn from the records compiled by the civil tribunal, and then, after an instituted examination, if nothing contrary is found, the ecclesiastical authority should issue a judgment declaring that it is sufficiently established that the person about whose existence inquiry is made has died." This suggests that the noble office of the judge

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is to issue a judgment in order to prevent greater harm, because, indeed, a wide path would be opened for complaints if the judge, when a spouse requests a judgment declaring the death of the former spouse, were to reject it from the outset; the ecclesiastical tribunal would be accused of being a hindrance to civil laws and morals, as if it were concerned with civil marriages, and making the condition of good Catholics worse than that of the wicked. The wicked, having scorned ecclesiastical authority, might perhaps, by lawful or unlawful means, be eager to enter into marriage after the death of the former spouse, which has not yet been duly declared by the Church. The good person demands a remedy by law, a declaratory judgment from the Church, so that after 30 or more years, he may finally be able to enter into another marriage with a clear conscience. Should this case be completely dismissed? Or should the words of the Instruction of 1883 be interpreted in another way? Hence, the following is questioned: I. Should a judgment ever be issued, declaring that it is sufficiently established that the person about whose existence inquiry is made has died, based on hearsay, presumptions, citations in diocesan newspapers, etc., if the matter concerns a marriage to be contracted? II. Should the words: "until it is certainly known of the death of the former spouse," be understood in such a way that only a document, a certain message, a witness, establishes certainty, excluding presumptions and other legally admissible means, according to the judge's discretion, if these are deemed sufficient? III. If the answer to the first question is affirmative, then, furthermore, is it asked, whether...

[*Latin ed. p. 750*]

750 FROM THE SUPREME SACRED INQUISITION: Two opinions, both concurring in declaring that two sentences are required to establish the death of a spouse, are suspended; whether it suffices for one sentence to serve as a substitute document regarding the free state of the party is to be determined. Thursday, May 6, 1891. In the general Congregation of the Holy Roman and Universal Inquisition, the aforementioned matter was proposed, and after the vote of the Most Reverend Consultors, the Most Eminent and Reverend Lords Cardinals, general Inquisitors in matters of faith and morals, were ordered to respond: To the first and second questions: It can certainly be established that the prior spouse is dead, even from presumptions, indications, and other supporting evidence, which are admitted under common law, provided that they are legitimate and sufficient, according to what is stated in number 6 of the Instructions of the Supreme Congregation of the Holy Office: Concerning the proof of the death of a spouse. To the third question: Negatively to the first part, affirmatively to the second, unless someone with an interest has interposed an appeal. On the following Saturday, the 8th of the said month, the Most Holy Father Leo XIII, having graciously approved the resolution presented to him by

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the Most Eminent Fathers Cardinals during an audience with the Reverend Father Assessor of the Holy Office. I. MANCINI, Notary of the Holy Roman and Universal Inquisition.

[*Latin ed. p. 751*]

731 SUMMARY OF THE ACTIONS CONTAINED IN THIS VOLUME XXIII. – LETTERS AND ACTS OF THE ROMAN PONTIFF. Letters in brief form from His Holiness Pope Leo XIII, by which the Seminary of Saints Ambrose and Charles is established, which is attached to the Basilica of Saint Charles in the City. . . . page 3. A letter from His Holiness Pope Leo XIII to the Archbishops and Bishops of the Kingdom of Lusitania, urging them to hold special gatherings, etc. 65. Apostolic Letters by which the Most Holy Virgin is chosen as the heavenly patron of the Congregation. 129. Letters in brief form from His Holiness Pope Leo XIII, by which the feast of Saint Joseph is granted to be celebrated under both precepts in the regions of Piedmont, Liguria, Sardinia, and Lombardy. 191. Encyclical Letter from His Holiness Pope Leo XIII to all local Ordinaries concerning the Rosary of the Blessed Virgin Mary. 193. Letter from His Holiness Pope Leo XIII to the Archbishops and Bishops of the German and Austro-Hungarian Empires concerning the corrupt custom of duels. 202. Apostolic Letters by which the episcopal hierarchy is established in Japan. . . . 257. Apostolic Letters from His Holiness Pope Leo XIII, by which a college for the instruction of Maronite clerics is established in the City. . . . 264. Encyclical Letters from His Holiness Pope Leo XIII to all prelates and Catholics of France. . . . 519. Letters from His Holiness Pope Leo XIII to the Most Reverend Cardinals of France. 641. Letters from His Holiness Pope Leo XIII to the Ordinaries of North America concerning the agreement of the Archiepiscopal See of Saint Paul regarding two Catholic schools. . . . 654. A brief by which an Indulgence is granted to the Order of Carmel as often as desired on the feast day of the Most Blessed Virgin of Mount Carmel. 741. FROM THE HOLY CONGREGATION OF THE COUNCIL. January. Concerning the division of a parish; it is not permitted to divide two parishes in order to erect a chapel, which already exists within said two churches. 27. Concerning a dispensation; it is denied to two boys to obtain other benefices, beyond those which they already possess. 33. Concerning marriages in Compostela; it is declared that marriages are still and conveniently to be celebrated in Spain.

[*Latin ed. p. 752*]

752 SUMMA: Public documents, in order to have the force of obligation... » 34 Bononiensis: Concerning marriages; it is declared that the judgment which asserts the nullity of a marriage must be confirmed... » 39 Cingulana: Concerning absolutions and the remission of burdens... » 70 Carthaginiensis: Concerning distributions; it is not permitted for a canon theologian, who receives a pension from the Seminary, to also receive choral distribu-

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tions, for the days on which he teaches in the same Seminary. » 72 Melevitana: Concerning betrothals; the judgment of the Curia is confirmed, which did not admit to the validity of true betrothals. » 83 Mutilana: Concerning pensions; it is declared that a pension, imposed by a Bishop, in favor of other benefices, is not to be sustained. » 89 Galtellinorensis: Concerning parochial rights; various questions, regarding parochial rights, are settled between the Chapter and the parish priest. » 97 Apuana: Concerning funerals; the question, previously proposed, concerning the funerals of the deceased in the hospital, is raised again. » 114 Mazarenus: Concerning the liberation of burdens; a small portion is granted as a dowry subsidy... » 119 Olomucensis: Concerning dispensation from irregularity; a parish priest is dispensed from an irregularity arising from the amputation of his left hand, so that he may touch the sacred vessels. » 131 Maioricensis: Concerning irregularity; it is left to the judgment and conscience of the Bishop to dispense a blind man from an irregularity. » 135 ACTORUM Capuana: Concerning pensions; the decree of the Ordinary, ordering the payment of a pension, is approved... » 137 Novarense: Concerning patronage; the matter is discussed among several concerning the right to nominate to a vacant parish. » 143 Cuneense: Concerning the allocation of revenues; the matter is between the canons concerning the sum to be paid from the treasury, assigned for the partial restoration of two prebends. » 150 Calaritana: Concerning the renunciation of a parish; the renunciation of a parish is confirmed, which the plaintiff later sought to impugn. » 160 Regiense: Concerning marriage; a dispensation from a valid marriage is granted, forbidding the woman from entering into new marriages without the consent of the Holy Congregation. » 167 Maceratensis: Concerning the parochial congrua; it is decided that the Chapter is not obliged to repay to the parochial vicar the parochial congrua, exempt from the tax on movable property. » 181 Novarense: Concerning dispensation from irregularity; the petitioner, to whom a dispensation is granted, suffers from a defect in the conformation of the right hand. » 207 Taurinense: Concerning marriage; it is resolved that, based on the evidence presented, the marriage is not null. » 209 Utinense: Concerning tithes and union; the judgment of the Ordinary's Curia is confirmed, in which it was determined that the parishes of the city of Udine are united under the metropolitan Chapter. » 224 Oxomensis: Concerning distributions and substitution; an answer is given, concerning...

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753 SUMMA ACTORUM: A Doctor should not be present in the choir when fulfilling his teaching duties in a seminary; however, he is not obligated to provide a substitute in case of illness, but should do so at his own expense, to fulfill his teaching duties.

237 Milan: The judgment of the Milanese court is confirmed, which had decided that the institution in question was not an Oratory, but a festive

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school for girls, etc.

242 Rome: Regarding the interpretation of a rescript: The Ordinary is to obtain the consent of the Chapter when dealing with those seeking a dispensation, after they have purchased, with good intention, goods from the episcopal table.

254 Nicaea: Concerning pious legacies: It is resolved that a pious legacy should be administered by four persons, chosen by the Bishop and the Chapter, under the presidency of the same Bishop.

267 Vrhbosna: Regarding legal matters: Various doubts are raised concerning the nature of the Church of Sarajevo, and concerning the rights of the parish priest and the Chapter.

276 Cortona: Regarding solutions and restorations: The matter concerns a tax to be paid by the Chapter or the parish priest.

294 Nuceria: Regarding the legacy of pagans concerning participation: The possibility of deviating from the pious will is denied.

298 Fermo: Regarding burdens and pensions: Petitions are rejected in which a beneficiary requests exemption from pensions to be paid.

300 Acta, Volume XXIV, January: Regarding parochial rights: It is established that the parish priest has the right to give a solemn blessing to ships.

309 Miletus: Regarding marriage: A dispensation is granted from a valid marriage, but the man is forbidden from entering into a second marriage without the consent of the Congregation.

331 Lucania: Regarding sacred functions: The judgment of the court is confirmed, which established that the Franciscan fathers and the parish priest of St. Anthony are in quasi-possession of certain functions in the church of the Most Holy Annunciation, where the pious Sodality has its seat.

342 Pisaura: Regarding tithes and the erection of a baptismal font: The question concerns the right to collect tithes and novales, and the erection of a baptismal font.

351 Burgos of the Holy Sepulchre: Regarding procuration: It is doubted whether a Bishop, during his Visitation, can demand from the visited parish priests, in addition to provisions, also expenses for carriages in order to reach the parishes.

365 Wroclaw: Regarding irregularities: A dispensation is granted from an irregularity to a young man who, having abandoned the heresy of the Protestants, desires to enter the clerical state.

367 Aquila: Concerning a titular Bishop regarding giving testimony.

395 Concord of Die: Regarding marriage: A dispensation is granted from a valid marriage, but the man is forbidden from entering into a second marriage without the consent of the Congregation.

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754 In the records of Rome concerning compensation; the Vicar requests that a dismissed canon be restored to his rights regarding letters, so that he may fulfill the obligations of his benefice, and that the sum of 513 florins, which he expended for the preservation of the church, be reimbursed to him from the funds of the parish, as well as 513 florins of the same benefice. 409 Concerning the election of a capitular Vicar; regarding marriage; a dispensation is denied to one, because, it seems, the request was not sufficiently proven. 415 Concerning the precedence between a parish priest and a canon of the collegiate church; a pension is granted. 414 A parish priest who [is]... 414 Concerning the application of the Mass to a pious people; concerning interpretation; the diocesan law is extended to prebends held from the Holy See. 435 Concerning the curate and the delegation of jurisdiction. 415 Concerning the nomination of a canon. 415 To the Bishop, the faculty of nominating honorary canons is denied. 437 Concerning the solution of [a matter]; it is considered whether those who hold honorary offices, who have rights and honors, ought to be considered true coadjutors, who, by civil law, are excused from certain duties, which are granted by the civil government to the parish priest, with the suppression of parochial tithes, a portion of which was retained by the coadjutors. 440 Concerning the granting of an indulgence; an indulgence is granted to canons to receive distributions, even if they are absent, infirm, etc. 440 Concerning the erection of the collegiate church of Comayagua; the prelate requests that a collegiate church be established according to the form used among the English, or among... 447 Concerning the repayment of [debts] by a parish priest of America Septentrionalis; he is ordered to repay the 500 florins which he had previously stated he had already repaid. 449 Concerning the rights of Aretina; it is resolved that the sentence of the Matritensis court, issued in a dispute concerning jurisdiction with the churches of Cuba, does not declare the Church of Santa Maria de la Plebis to be a cathedral; but this also pertains to the cathedral, in conjunction with the Cathedrals of Cuba. 477 Concerning marriage in Faventina; it is considered whether the rights and privileges belong to the cathedral, and whether they should be confirmed or annulled; the sentence of the Faventina court, which declared the marriage to be valid, is confirmed. 457 Concerning marriage in Engolisme; a dispensation is granted for a marriage that was consummated. 483 Concerning the exemption of Ipporegien; it is resolved.

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756 SUMMARY OF ACTS concerning doubts regarding the anniversary of a Bishop's consecration.

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758 SUMMA ACTORUM Ordinarii quoad facultates peculiares » 396 Decretum, quo statuitur, copulam carnalem, sponsalibus supervenientem,

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503 Dubia circa privilegium Bullae Cruciatae.

504 Instructio ad Vicarios apostolicos in imperio Sinarum et finitimis regnis atque provinciis, circa opium.

506 Dubia quoad privilegia presbyterorum graecorum.

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573 Responsum quoad validitatem matrimonii, quatenus baptisma unius coniugis dubium sit.

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744 Dubia circa probationem obitus prioris coniugis.

747 S. CONGR. IMMUNITATIS Clericus quoad privileg, fori.

627 EX S. CONG. INDICIS Decretum, quo plures prohibentur libri.

575 EX S. C. DE PROPAGANDA FIDE Declarationes quoad Instructionem pro definiendis causis criminalibus clericorum.

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396* Instructio pro cognoscendis et definiendis causis criminalibus clericorum.

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758 SUMMA ACTORUM Ordinarii concerning particular faculties » 396 Decree, by which it is determined that carnal copulation, occurring after

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506 Doubts concerning the privileges of Greek priests.

516 Decree concerning the emblems of the Most Sacred Heart of Jesus to be used in the Eucharist.

573 Response concerning the validity of marriage, in so far as the baptism of one of the spouses is doubtful.

574 Doubts concerning the Apostolic Constitution.

625 Concerning the instruction of the chastity of men commonly called Mangiò.

637 Concerning the faculties of Latin missionaries in the East.

639 Concerning the visitation of the sick who are in grave danger.

639 It is permitted for missionaries to exchange goods for necessities of life.

640 Concerning the faculties of Prefects.

640 Concerning the dispensation of irregularity in the children of heretics.

699 Concerning the celebration of Mass by vagrants and pilgrims.

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707 Concerning the conversion of money into goods.

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708 Concerning the departure of nuns.

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744 Doubts concerning the proof of the death of the former spouse.

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[*Latin ed. p. 760*]

760 *SUMMA ACTORUM* of the United States of North America » 684 Concerning the education of boys in Seminaries » 701 Concerning the absolution of heretics . . . » 704 Concerning the celebration of Mass by traveling priests . . . . . » 705 Missionaries concerning the use of money » 705 Missionary merchants . . . » 706 Concerning Clerics who engage in commerce in the Orient » 706 *EX S. CONGR. CAEREMONIALI* Bishops concerning the use of the *pileolus* » 379 *EX SECRETARIA STATUS* Graces or dispensations ought not to be requested from the Apostolic See by telegraph, but in writing » 447 SACRED CONGREGATION CONCERNING THE STATUS OF THE REGULAR CANONICALS, a Decree wherein it is declared that professed individuals with simple vows cannot validly be elected to higher offices » 566 Concerning the testimonies to be presented for the reception of the religious habit » 709.

[*Latin ed. p. 761*]

761 INDEX OF CONCLUSIONS WHICH ARE FREQUENTLY NOTED, A COMPLETE GENERAL INDEX OF THOSE EXPOSED, OR OF ACTIONS IN THE MATTER CONTAINED IN THIS VOLUME, IS FOUND. These conclusions are contained under the following words: Building, Appeal, Benefit concerning expenses, Canon, Theologian, Pious cause, Agreements, Bishop concerning visitation, Exemption, Parochial rights, Matriculations concerning tithes, Marriage, Mass for the people, Pension, Regulars, Res judicata, Betrothal, Building, Appeal. If anyone has built on another's land with his own materials, the building belongs to him, and so does the land: and if he knows that the land is another's, he is to be considered to have voluntarily relinquished his ownership of the materials. page 558. The Lord, if he requests a building and does not pay the price of the materials and the wages of the laborers, can be repelled by an exception of bad faith, if he does not know that the land on which he built is another's, and if he has built in good faith as if it were his own, ibid. For if he knows, blame can be imputed to him, that he built recklessly on land which he knew to be another's, ibid. The Supreme Pontiff, having acquired rights in a third party, neither wishes nor can, without sin, injure him, unless there is a legitimate reason, which, according to the opinion of Cardinal De Luca, in discourse 2, paragraphs 6 and 7 concerning public regulations, must be for the public good. ibid. An appeal from an inferior judge to a superior judge is admitted whenever the appellant feels that he has been unjustly aggrieved. 58. The remedy of appeal is instituted for the defense of innocence and its protection; therefore, it is founded on the law of nature. ibid. Therefore, this remedy must also be granted against a judgment to which someone has promised to submit under oath,

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whenever he is unjustly oppressed by such a judgment, ibid. The judgment of the justice and appropriateness of the causes for which a religious may be dismissed from the Congregation is left to the discretion and conscience of the Superior General and his assistants of the Congregation of Oblates of the Immaculate Mary. ibid. And such just and reasonable causes...

[*Latin ed. p. 762*]

762 Regarding dismissals of members, it is permissible for the Superior General to dismiss members from the Institute, provided that the consent of the Assistant Generals is obtained, ibid. Neither a formal process nor a trial is required to determine a dismissal, but it can be carried out solely by examining the facts, ibid. Regarding expenses: Unless there are very serious reasons, it is not usually granted to reduce the endowment. For this has an aversion to the law. 414. The Church is not bound to the payment of debts, nor to the reimbursement of expenses, unless it is proven that these were useful and necessary, and that the approval of the Apostolic See is evident, ibid. Canonical Theologians: Masters of Seminaries who teach, and who receive a salary for that purpose, are not exempt from choral duties, so that they may not receive a double payment for one work; which is condemned as giving rise to avarice for gain by the sacred canons. 82. Canonicals are to perform their proper function if they give scriptural readings in the cathedral, as can be gathered from the most recent Encyclical of Gregory XVI, in which the Holy See is accustomed to congratulate Bishops if they have canonicals who are properly performing their function in the public readings of sacred literature, ibid. The Sacred Council C. is a constant practice of recalling canonicals to give public scriptural readings after the Encyclical of Gregory XVI. Among the most important matters, it is certain, ibid. Pious Causes: In pious causes, the will of the founders must be considered as the supreme law. 275. The one making the disposition can declare his own will in any way he chooses; so that if the one making the disposition is still alive, no indication or argument is needed to declare his will, ibid. Agreements: It is a rule of law that no one can change an agreement to the detriment of another: and that once something has been agreed upon, it cannot subsequently be disapproved. 189. Moreover, nothing is more in accordance with right reason and with both laws than that pacts and agreements, and the obligations derived from them, should be religiously observed, ibid. Bishop regarding pastoral visits: It is clear that the Bishop conducting a pastoral visit, and others accompanying him, can receive nothing from those being visited, except food. However, according to the Tridentine Council, Session 24, chapter 3, regarding reforms, it is permitted to offer money instead of food, for the

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purpose of expenses: provided that...

[*Latin ed. p. 763*]

INDEX G: A single collection should be taken, even if several places are visited on the same day. 367. From the law, it is clear that Bishops can demand the *synodaticum* or *cathedraticum*: that is, a tax paid in honor of the episcopal cathedral; also, the right to demand a collection for funerals, a fourth of the tithes, etc. ibid. EXEMPTION: From the Brief of Paul V, it is clear that the Congregation of St. John of God is exempt from all jurisdiction of the local Ordinaries: so that Bishops, even if they hold the dignity of Cardinal, cannot interfere or intrude in matters concerning observance and discipline. 621. Such privileges and exemptions were confirmed by Urban VIII, in the Brief *Cum sicut*, concerning the convents and hospitals of the aforementioned Congregation, in which twelve Religious live. ibid. However, with regard to those convents or hospitals in which there is a smaller number of Religious, the Bishop, together with the Superior of the same Congregation, can proceed with the review of accounts and administration; but in such a way that they do not interfere in any way with the individuals themselves. ibid. Indeed, the hospital of the City of Yetula is exempt from the jurisdiction of the Ordinary, by virtue of the Brief of Urban VIII, *Ad futuram rei memoriam*, although NERALIS 763 states that not even twelve of the Religious of the aforementioned Congregation are assigned there, nor do they actually reside there. ibid. Therefore, it seems that the hospital of Granada, and its church and altars, are perpetually exempt from the jurisdiction of any parochial rectors, by the Brief of St. Pius V, *Salvaturis Nostri*, with regard to the collection of alms, offerings, dues, and even funeral collections, which are received for the benefit of the hospital itself. ibid. It should be noted that these privileges and exemptions granted to the hospital and church of Granada by St. Pius V, and then by Gregory XIII, Sixtus V, and finally by Gregory XIV, were subsequently extended to all hospitals and churches of the Order, both within and outside of Italy. ibid. These hospitals are exempt from the jurisdiction of the parish priests because (as stated by Luca, *Discipline Parodi*, XXIII, p.) he who is appointed from the same Order, or from another, to administer the sacraments to the sick, is considered to be in the place of a parish priest, and the hospital itself is considered to be within his jurisdiction, having a separate territory, and those who live there constitute a kind of separate and self-standing parish. 622. The rights of the parish priest in his parish are, as are the rights of the Bishop in his diocese, by law and by their very nature, accompanied by power.

[*Latin ed. p. 764*]

764 INDEX GENERALIS etiam et praecedentia pro omnibus aliis. 318. Et ideo, sicut nullus Episcopus, cuiusvis privilegii praetextu, potest

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exercere pontificalia in aliena Dioecesi, absque expressa Ordinarii loci licentia, sic nullus sacerdos absque licentia parochi agere debet solemnes et publicas functiones, ibid. Non esse ambigendum videtur quod recenseri debeant inter functiones publicas et solemnes, benedictiones illae quae explentur ritibus et precibus statutis, cum cantu ipsarum precum a Sacerdote sacris vestibus induto, ac magna adstante fidelium multitudine, ib: Benedictiones solemnes navium, reservantur parochis, ceu reservantur eisdem, processiones agendae intra limites paroeciarum suarum; quae nullimode fieri queunt absque eorum consensu, ibid. Matricitas quoad decimas. Liquet, matricem, relate ad filiam vel filias, dici illam paroecialem Ecclesiam, ex cuius territorio dismembratio altera vel plures constituuntur paroeciae. 364. Liquet, matricitatem haud importare filiae vel filiarum dependentiam; quinimo omnino excludere; quia omnes Ecclesiae noviter erectae cum plena authonomia et iurisdictione, in iure paroeciali sunt coaequales; ita ut improprie loquatur qui adhibet nomen matricis vel filiae, quando Ecclesiae ab una sint dependentes cum omnimoda subordinatione, ibid. Hinc facili modo deprehenditur matricitatem non esse purum nomen, sed ex facto nasci dismembrationis alicuius Ecclesiae; per quod altera vel plures constituuntur paroeciae ex parte territorii et populi ipsius, ibid. Legi tamen canonicae cohaeret reservatio decimarum favore matricis super partem vel totum territorium novae paroeciae, omnino independentis a prima quoad ius paroeciale, ibid. Etenim stare potest ut ecclesia filialis sit vera paroecia, atque in universum habeat ius parochiale, et tamen matrix ius decimandi retineat in toto territorio vel in parte paroeciae, noviter erectae, ibid. Causae et quaestiones super decimis, transactionibus legitimis finitae, resuscitali non possunt; et si compositio inter partes facta fuerit de consensu Ordinarii litigantium, rata et inconcussa persistit; et aequivalet liti finitae et rei iudicatae ex unanimi consensu doctorum, ibid. Matrimonium. Quae ad formam, substantiam et solemnia matrimonia respiciunt, regi debent per Ecclesiae Romanae leges. 39. Et consequenter, quidquid disponant, quoad sacramentum matrimonii, leges civiles, habendum est ceu iurisdictionis usurpatio. ibid.

[*Latin ed. p. 765*]

INDEX G. Laws, however, establish and constitute a law with the power of obligating customs for a long time, confirmed by the consent of those who use them; hence it happens that in the Church, a common law is abrogated and a new, contrary one is introduced, ibid. A domicile, relating to the parish of the individual, for the purpose of marriage, is acquired by the one who has resided in the place where the marriage is celebrated for a space of one month; provided that he intends to remain there for the greater part of the year. 223. A vagrant is one who has truly abandoned his former domicile and, in fact, has no other; although he intends in his mind where he should establish his domicile; because a domicile is constituted

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not only by intention, but also by fact and reality, ibid. It is established that the proper parish of a vagrant is any parish in the place where the vagrant is actually present, ibid. The parish priest, before proceeding to join vagrants in marriage, must make an inquiry, refer the matter to the Ordinary, and obtain permission from him, ibid. However, marriages of vagrants are valid, in which the parish priest has not preceded with an inquiry, nor obtained permission from the Ordinary; because the essential elements for marriage are present, and because the Council of Trent has not attached a clause invalidating its law, ibid. Rape is the violent abduction of a woman, for the purpose of marriage; therefore, unless the woman is forcibly taken, without her consent, from one place to another, it does not constitute a prohibiting impediment, ibid. Since it can be quickly and in a short time ascertained whether a union has been perfected between spouses, it is not easily believable that a woman, proclaiming something long after the fact, speaks of the husband's impotence. 424. A true and serious consent from the contracting parties is required in the marriage contract by both natural and positive law; therefore, it is necessary that the consent be free from any circumstance that would impair full freedom. 612. Therefore, a marriage contracted by force and fear must be considered null in itself, ibid. However, in order to annul a marriage, force and fear must concur and continue in the very act of marriage; nor is it sufficient that they intervened beforehand, ibid. In the matter at hand, these requirements seem to be lacking; for the father clearly showed the daughter, before the marriage, who was weeping from some disturbance, that he would not use force to compel her to enter into the marriage, ibid. To dissolve a marriage, especially a consummated one, witnesses are required who are adults in every respect, among whom cannot be counted the parents, who, by their very nature, would testify in favor of their children, ibid. For, out of reverence for the sacrament, doubtful proofs and conjectures are certainly rejected, and only the proofs of witnesses who are adults in every respect are admitted.

[*Latin ed. p. 766*]

INDEX GENERALIS 766 exhibits only those witnesses who are suitable, legitimate, and concerning whose testimony no doubt can arise, ibid. Likewise, a woman is absolved from the accusation of marriage who, having contracted marriage from the beginning unwillingly – and forced, afterwards admitted to carnal intercourse, ibid. It is difficult to prove consummation in marriages where the woman is no longer a virgin; spouses are considered apt for fulfilling marriage, and a long period of cohabitation has preceded.

733. This difficulty is not lessened by the confession of the spouses, nor by the testimony of a seventh witness; these proofs are to be held as worthless if they are in favor of the confessing parties.

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734. Mass for the People. The Mass for the People, as a real and personal obligation, is to be applied by the parish priest himself, unless there is a canonical reason, or a true necessity.

669. For while other parochial duties are entrusted to others, the people receive the benefit; but in the offering of the sacrifice, not only is the effect considered, but the office of the mediator must be fulfilled, which cannot be accomplished by others, ibid. The canonical curate can entrust to others the obligation of applying the Mass for the People whenever, from the choral schedule, he is required to say the conventual Mass, as this is the principal duty of his benefice, to which the parish is an accessory, ibid. The proper nature of the conventual Mass is that it be applied for the benefit of benefactors in general, and not specifically for the fulfillment of a particular bequest, ibid.

Pension. Pensions are to be paid in full, unless expressly otherwise prescribed by the Apostolic See.

308. A pension is usually imposed after the Superior has been informed of the fruits of the benefice; so that, even considering future probable events, a suitable and sufficient portion remains for the benefice, ibid. The beneficiary is the owner of the fruits of the benefice; therefore, whatever is increased or diminished proceeds from his favor or detriment, without the pensioner feeling the loss or gain.

ibid. Pensions and allowances which are repaid by the Government, in place of revenues taken away, seem to be substituted in their place.

547. Justice itself favors canonical coadjutors; for if they are considered to have been deprived by civil law, they ought to be compensated, as partners in labor by a partner who has obtained an increase in revenues through an unjust law; for he who is chosen for a duty, should not be repelled from a reward, ibid.

[*Latin ed. p. 767*]

INDEX Generalis

Regulars. It is clear that all Religious are subject to the Constitutions of St. Pius V. – Even though they may beg – both on Sundays or feast days, or at other times of the year, they can ring the bells whenever they please, and celebrate Mass even at a time when the Ordinary has celebrated. 865. It is certain that, according to the aforementioned Constitution of St. Pius V, they can celebrate Mass and perform divine services whenever they see fit, even on Sundays or feast days, even before the parish priest of the church has celebrated. This privilege has not lapsed into disuse, but still remains in full force, as is shown by several resolutions of both the Sacred Congregation of Bishops and the Sacred Council. 865. Regulars, who, by the institution or faculty of the Apostolic See, are permitted to seek alms or beg, are not required to request permission from the Ordinary to seek

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alms throughout the diocese, since in the erection of monasteries, this permission is readily granted to them by the Ordinaries. 683. However, if they are collecting alms outside the place where the monasteries are located, they are required to show the Ordinary the permission of their superiors. 684. Brothers of mendicant orders cannot in any way be prohibited by the Bishops from, by themselves, seeking alms in the dioceses where they have convents. But if they wish to beg outside the diocese, they are required to obtain the consent of the Ordinary. 767.

Res Judicata. A res judicata has such force that it puts an end to disputes. 558. And the judgment that has passed into res judicata has such authority that it can make something into nothing, and falsehood into truth, and white into black. 558. Therefore, it is certain that it cannot be retracted afterwards, and that anyone who wishes to contradict it will no longer be heard. 558. The Supreme Pontiff, having acquired rights in the third place, neither wants nor can, without sin, injure them, unless there is a legitimate reason, which, according to the opinion of Cardinal De Luca, in discourse 2, paragraphs 6 and 7 on public utility, must be. 558. The right to prove belongs to the accuser: and even if the marriage is true, unless it is proven with apodictic arguments, the accused is acquitted. 89. For no one is to be condemned based solely on presumption; this principle has particular force in matters of marriage, where judgment must be rendered for non-existence, or for freedom, unless the contrary is fully proven. 89.

[*Latin ed. p. 768*]

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